Supreme Court, U.S.
FILED
FEB 13 1992

Nos. 91-543; 91-558; 91-563

IN THE

Supreme Court of the United States

October Term, 1991

THE STATE OF NEW YORK; THE COUNTY OF ALLEGANY; and THE COUNTY OF CORTLAND,

Petitioners,

against

THE UNITED STATES OF AMERICA; JAMES D. WATKINS, as Secretary of Energy; IVAN SELIN, as Chairman of the United States Nuclear Regulatory Commission; THE UNITED STATES NUCLEAR REGULATORY COMMISSION; ADMIRAL JAMES B. BUSEY, IV, as Acting Secretary of Transportation; and WILLIAM P. BARR, as United States Attorney General,

Respondents,

THE STATE OF WASHINGTON; THE STATE OF NEVADA; and THE STATE OF SOUTH CAROLINA,

Intervenors-Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

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CERTIORARI GRANTED JANUARY 10, 1992

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(1763—LCS-523—1992)

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Nos. 91-543; 91-558; 91-563

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991.

THE STATE OF NEW YORK; THE COUNTY OF ALLEGANY; and THE COUNTY OF CORTLAND,

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THE UNITED STATES OF AMERICA; JAMES D. WATKINS, as Secretary of Energy; IVAN SELIN, as Chairman of the United States Nuclear Regulatory Commission; THE UNITED STATES NUCLEAR REGULATORY COMMISSION; ADMIRAL JAMES B. BUSEY, IV, as Acting Secretary of Transportation; and WILLIAM P. BARR, as United States Attorney General,

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THE STATE OF WASHINGTON; THE STATE OF NEVADA; and THE STATE OF SOUTH CAROLINA,

Intervenors-Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket Entries.

1990		
Feb 12	1	Complaint, issued summons & returned to atty f/service
Mar 1	2	Original Summons & Affidavit of Svce of Summ/Complaint upon listed Defts, by mail on 2/14/90
Mar 16	3	FEDERAL Defts notice of appearance
Apr 25	4	DEFTS Letter stating parties have agreed to a 30 day extension of time for Defts to respond to Pltfs complaint
May 23	5	STIP/ORDER 5/23/90 (CGC) Defts time to Answer is extended to 6/8/90
Jun 8	6	Proposed Intervenors' (Movants) Notice of Motion for Leave to Intervene, returnable *7/6/90*; Supporting Affidavit
Jun 8	7	Proposed Intervenors' Memo of Law
Jun 14	8	Proposed Intervenors' (Movants) Letter to Clerk confirming adjournment of their motion from 7/6/90 to *7/20/90*
Jun 11	9	DEFTS Notice of Federal Defts' Motion to Dismiss returnable *8/17/90*
Jun 11	10	DEFTS Motion to Dismiss
Jun 11	11	DECLARATION of Louise Milkman in support of defts' motion to dismiss
Jun 11	12	DEFTS Memorandum of Law
Jul 6	13	AFFIDAVIT of Cindy M. Monaco in opposition to motion to intervene
Jul 6	14	PLTF Cortland County's Memo of Law in Opposition to Motion for Leave to Intervene
Jul 9	15	PLTFS Answering Affidavit in Opposition to Intervention
Jul 9	16	PLTFS Memorandum of Law in Opposition to Motion for Leave to Intervene

Jul 9	17	PLTFS Certificate of Svce of Motion Opposing papers upon Counsel on 7/6/90
Jul 3	18	DEFTS Notice to Court stating No Opposition to motion for leave to Intervene by Movants and to notify Court of an error of citation in the Defts' Memo is Support of motion to Dismiss, filed on 6/8/90: on page 3, line 17 of that brief, the citation to 10 CFR part 24 (re: incineration) should be to 10 CFR Section 20.305
Jul 20		MOTION: by Proposed Intervenors for Leave to Intervene = DENIED; Intervenors allowed to proceed *amicus curiae* status, and file a brief
Jul 23	19	LETTER from AAG Berens adjourning motion from 8/17/90 to *10/5/90* State will submit opposing motion papers by 9/7/90
Jul 23	20	ORDER 7/20/90 (CGC) Movants' motion for leave to intervene is DENIED, except that (1) it is GRANTED to the extent of granting leave to movants to submit a single memo of law on the motion to dismiss and (2) granted to the extent of granting leave to movants to submit a single memo of law on pltfs motion for summary judgment
Aug 17		MOTION: Adj. to *10/5/90*
Aug 30	21	Proposed Intervenors (Movants) Notice of Motion for Leave to Intervene, returnable *9/21/90*
Aug 30	22	Movants Supporting Affidavit by Christine Gregoire
Aug 30	23	Movants Supporting Affidavit by Jerry Griepentrog
Aug 30	24	Movants Supporting Affidavit by Michael Jarrett
Aug 30	25	Movants Memo of Law

Sep 7	26	PLTF County of Allegany's Affidavit in Opposition to Deft USA's M/Dismiss and in Support of M/Summ/Judgment of Pltf NY
Sep 7	27	PLTF County of Allegany's Memo of Law
Sep 7	28	PLTF County of Cortland's Affidavit in Opposition to to M/Dismiss
Sep 7	29	PLTFS County of Cortland's Affidavit os Clarence Rappleyea in Support of Pltfs Motion
Sep 7	30	PLTF County of Cortland's Memo of Law in Opposition to Fed/Defts M/Dismiss
Sep 7	31	PLTF County of Cortland's Affidavit in Opposition to Movants M/Intervene
Sep 7	32	PLTF County of Cortland's Memo of Law to M/Intervene
Sep 7	33	PLTF NYS's Affidavit in Opposition to Movants M/Intervene
Sep 7	34	PLTF NYS's Memo of Law
Sep 6	35	AMICUS CURIAE Memo of Law in Support of Defts M/Dismiss
Sep 7	36	PLTF NYS's Notice of Motion for Summ/ Judgment, returnable *10/5/90*; Supporting Affidavit
Sep 7	37	PLTF NYS's Rule 10j Statement
Sep 7	38	PLTF NYS's Memo of Law in Opposition to Defts M/Dismiss and in Support of its M/Summ/Judgment
Sep 14	39	Proposed Intervenors' (States of Washington, Nevada, & South Carolina) Notice of Motion to Dismiss, returnable *10/5/90*
Sep 14	40	Proposed Intervenors' "States", Supporting Memo of Law
Sep 14	41	Transcript of Proceedings held before Judge Cholakis on 7/20/90
Sep 21	42	PLTF NYS's Affidavit in Opposition to M/Dismiss by "States"

Sep 21	43	PLTF NYS's Memo of Law
Sep 21		MOTION: by Proposed Intervenors for leave to Intervene = Court GRANTS motion to Intervene, motions returnable 10/5/90 are adjourned to *11/2/90*; answering papers to be filed by 10/19/90
Sep 24	44	Letter from Atty Milkman re: personal appearance not necessary for Motion term of 9/21/90
Sep 24	45	ORDER 9/21/90 (CGC) the Motion for Leave to Intervene is GRANTED; movants are granted intervention in this action as parties deft
Oct 4	46	STIP/ORDER 10/3/90 (CGC) Defts' & Intervenors' Response to Pltfs' Motions for Summ/Judgment/Oppositions to Defts' Motion to Dismiss will be served on all parties & Court by overnight mail on 10/26/90; Pltfs' Reply papers will be served on all parties & Court by overnight mail on 11/21/90; Oral argument set for 12/7/90
Oct 5		MOTIONS: Adj. to *11/2/90*
Oct 26	47	Memo of Law of *AMICUS CURIAE* in Opposition to NYS's Motion for Summ/ Judgment w/Exhibits
Oct 29	48	DEFTS (Fed) Cross-Motion for Summ/Judgment and in Opposition to Pltfs Cross-Motions for Summ/Judgment and in reply to Pltfs' Opposition to Defts' Motion to Dismiss, returnable *12/7/90*
Oct 29	49	DEFTS Memo of Law
Oct 29	50	DEFTS Declaration of Louise Milkman in Support of Motion for Summ/Judgment
Oct 29	51	DEFTS Rule 10j Statment
Oct 29	52	DEFTS Compiled Declarations & Exhibits

Oct 16	53	CORRECTED ORDER 10/16/90 (CGC) Granting Motion of "States" to Intervene (caption on Order corrected stating "States" as the Movants)
Oct 30	54	INT/DEFTS "States" Notice of Motion for Summ/Judgment, returnable *12/7/90*
Oct 30	55	INT/DEFTS Rule 10j Statement
Oct 30	56	INT/DEFTS Supporting Afdidavit of Booth Gardner
Oct 30	57	INT/DEFTS Supporting Affdiavit of Robert J. Miller (unsigned)
Oct 30	58	INT/DEFTS Supporting Affdiavit of Carroll A. Campbell, Jr.
Oct 30	59	INT/DEFTS Memo of Law
Nov 13	60	INT/DEFTS Affidavit of Robert J. Miller
Nov 2		MOTION: Adj. to *12/7/90*
Nov 16	61	Supplemental Declaration of Stephen N. Salomon which corrects an error contained in the Declaration filed as Exhibit A to the Defts' Memo in Support of Cross-Motion for Summ/Judgment filed on 10/26/90
Nov 21	62	PLTF NYS's Reply Affidavit in Support of their Motion for Summ/Judgment and in Opposition to Int/Defts Cross-Motion for Summ/Judgment
Nov 21	63	PLTF NYS's Rule 10j Statement
Nov 21	64	PLTF NYS's Memo of Law
23	65	Plaintiff Allegany County's REPLY MEMO in Opposition to Motion to Dismiss & Cross Motion for Summary Judgment and in Support of State of New York's Motion for Summary Judgment
	66	Plaintiff Cortland County's Memo of Law in Opposition to Intervenors Motion to Dismiss
Dec 7		MINUTES: Govt's Motion to Dismiss is GRANTED, All other Motions are DENIED

7	67	ORDER: Deft/Govt's Motion to Dismiss is GRANTED, All claims against Defts are dismissed w/prejudice
Dec 26	68	Judgment (mailed copies & notice to litigants re: Time to appeal)
Dec 26		JS-6 Mailed
1991		
Jan 9	69	Transcript of 12/7/90 motion decision by Judge Cholakis in Albany
Jan 23	70	Transcript of 12/7/90 motion held in Albany before Judge Cholakis
Jan 30	71	Notice of appeal by pltf County of Cortland, NY, from 12/26/90 judgment
Jan 30	72	Notice of appeal by pltf County of Allegany, NY, from 12/7/90 order and 12/26/90 judgment
Feb 1		Forwarded copies of Allegany County's notice of appeal and Cortland County's notice of appeal to all appearances
Jan 31	73	Notice of appeal by deft State of New York from 12/7/90 order and 12/26/90 judgment
Feb 1		Forwarded copies of NYS notice of appeal to all appearances
2/4/91		Copy of district court docket entries and notice of appeal on behalf of Appellant County of Cortland filed. [91-6031] Form C due on 2/9/91. Form D Due on 2/9/91. (unj) [91-6031]
2/4/91		Copy of district court docket entries and notice of appeal on behalf of Appellant County of Allegany in 91-6033 filed. [91-6033] Form C due on 2/9/91. Form D due on 2/9/91. (unj) [91-6033]
2/4/91		Copy of district court docket entries and notice of appeal on behalf of Appellant State

	of New York in 91-6035 filed. [91-6035] Form C due on 2/10/91. Form D due on 2/10/91. (unj) [91-6035]
2/6/91	Appellant County of Cortland Form C filed, with proof of service & attachments. [91-6031] Form C deadline sastisfied. (unj) [91-6031]
2/6/91	Appellant County of Cortland Form D filed, with proof of service & attachments. [91-6031] Form D deadline satisfied. (unj) [91-6031]
2/7/91	Appellant State of New York Form C filed, with proof of service & attachments. [91-6035] Form C deadline satisfied. (unj) [91-6035]
2/7/91	Appellant State of New York Form D filed. [91-6035] Form D deadline satisfied. (unj) [91-6035]
2/8/91	Appellant County of Allegany Form C filed, with proof of service & attachments. [91-6033] Form C deadline satisfied. (unj) [91-6033]
2/8/91	Appellant County of Allegany Form D filed. [91-6033] Form D deadline satisfied. (unj) [91-6033]
2/13/91	Scheduling order #1 filed. Record on appeal due on 3/8/91. Appellant's brief and appendix due on 3/15/91. Appellee's brief due on 4/15/91. Argument as early as week of 5/6/91. (Pre-Argument Conference scheduled for 2/21/91 @ 11:45 AM). (unj) [91-6031]
3/13/91	Joint Appendix received. Number of volumes: 1. Problem: awaiting appellant's brief. (onl) [91-6031]

3/14/91	Appellees USA, James D. Watkins, Kenneth M. Carr, NRC, Samuel K. Skinner, and Richard Thornburgh in 91-6031 motion for admission pro hac vice of: Jeffrey P. Kehne FILED (w/pfs). (onl) [91-6031]
3/14/91	Appellant County of Cortland in 91-6031 brief RECEIVED. Problem: awaiting record on appeal. (onl) [91-6031]
3/14/91	Notice of appearance form on behalf of Jeffrey P. Kehne, Edward J. Shawker, Esq., received. (Orig. to Calendar) Edited 3/25/91 in 91-6031, 33 and 35 [mc]. (unx) [91-6031]
3/15/91	Appellant County of Allegany in 91-6031 brief RECEIVED. Problem: awaiting record on appeal. (onl) [91-6031]
3/15/91	Notice of appearance form on behalf of Edward F. Premo, Esq., received. (Orig. to Calendar) (une) [91-6031]
3/18/91	Appellant State of New York in 91-6031 brief RECEIVED. Problem: awaiting record on appeal. (onl) [91-6031]
3/18/91	Order FILED GRANTING motion for admission pro hac vice of Jeffrey P. Kehne, Esq. by Appellee Richard Thornburgh, Samuel K. Skinner, NRC, Kenneth M. Carr, James D. Watkins, and USA, endorsed on motion form dated 3/14/91. (onl) [91-6031]
3/20/91	Notice of appearance form on behalf of John McConnell, Peter Schiff, Esq., received. (Orig. to Calendar) (une) [91-6031]
3/20/91	Record on appeal filed. (Original papers of district court.) (unv) [91-6031]
3/20/91	Record on appeal filed. (Original papers of district court.) (unv) [91-6031]

3/20/91	Appellant County of Cortland, New York in 91-6031 brief FILED with proof of service (ono) [91-6031]
3/20/91	Appellant County of Allegany, New York, in 91-6031 brief FILED with proof of service. (ono) [91-6031]
3/20/91	Appellant State of New York in 91-6031, County of Allegany in 91-6031, County of Cortland in 91-6031 joint appendix filed w/pfs. Number of volumes: one. (ono) [91-6031]
3/25/91	Letter, dated Mar. 21, 1991, by appellant STATE OF NEW YORK giving consent for filing of an amicus brief on behalf of The American College of Nuclear Physicians, Et Al. received (onl) [91-6031]
3/27/91	Letter, dated Mar. 27, 1991, by appellant COUNTY OF CORTLAND, giving consent to filing of amicus brief received (onl) [91-6031]
4/1/91	Letter dated Mar. 28, 1991, by appellee USA giving consent to filing of amicus brief by American college of Nuclear Physicians received (onl) [91-6031]
4/1/91	Letter dated Mar. 27, 1991, by amicus AMERICAN COLLEGE OF NUCLEAR PHYSICIANS confirming an amicus brief to be filed by appellee's due date received (onl) [91-6031]
4/1/91	Letter dated Mar. 27, 1991, by Intervenor-Appellee STATE OF SOUTH CAROLINA consenting to filing of amicus brief by Amer. College of Nuclear Physicians received (onl) [91-6031]
4/2/91	Letter dated Mar. 26, 1991, appellees the states of WASHINGTON and NEVADA,

	consenting to filing of amicus brief by Amer. College of Nuclear Physicians received (onl) [91-6031]
4/3/91	Letter dated Mar. 29, 1991, by appellant COUNTY OF ALLEGHENY, NY consenting to filing of amicus brief by Amer. College of Nuclear Physicians received (onl) [91-6031]
4/8/91	Proposed for argument the week of 5/20/91 in 91-6031, in 91-6033, in 91-6035. (cal) [91-6031 91-6033 91-6035]
4/11/91	Notice of appearance form on behalf of James Patrick Hudson, Esq., received. (Orig. to Calendar) (une) [91-6031]
4/11/91	Letter by appellee USA resubmitting consent to all parties of the filing of amicus brief received (onl) [91-6031]
4/16/91	Notice of appearance form on behalf of Allen T. Miller, Esq., received. (Orig. to Calendar) (une) [91-6031]
4/16/91	Appellees USA, James D. Watkins, Kenneth M. Carr, NRC, Samuel K. Skinner, and Richard Thornburgh in 91-6031 brief filed with proof of service Satisfy appellee's brief due. (onl) [91-6031]
4/16/91	Appellees State of Washington, State of Nevada and State of SC in 91-6031 brief filed with proof of service Satisfy appellee's brief due. (onl) [91-6031]
4/18/91	Set for argument on 5/21/91 at Uscthse (cac) [91-6031]
4/29/91	Appellant County of Cortland in 91-6031 reply brief filed with proof of service. (onl) [91-6031]

5/3/91	Appellant State of New York in 91-6031 reply brief filed with proof of service. (onl) [91-6031]
5/21/91	Case heard before MESKILL, PIERCE, MCLAUGHLIN, C.JJ (TAPE: 232+233) (car) [91-6031]
8/8/91	Judgment AFFIRMED by published signed opinion filed. (JMCL). (ona) [91-6031]
8/8/91	Judgment filed. (ona) [91-6031]
8/8/91	Judgment AFFIRMED by published signed opinion filed. (JMCL). (ona) [91-6033]
8/8/91	Judgment filed. (ona) [91-6033]
8/8/91	Judgment AFFIRMED by published signed opinion filed. (JMCL). (ona) [91-6035]
8/8/91	Judgment filed. (ona) [91-6035]
8/27/91	Appellee State of Washington, and State of Nevada itemized and verified bill of costs received. (ona) [91-6031]
8/29/91	Note: The OPINION PRICE is $3.60 (rek) [91-6031]
9/13/91	Appellee State of Washington, and State of Nevada statement of costs taxed in the amount of $61.85 filed. (ona) [91-6031]
9/17/91	Judgment MANDATE ISSUED. (une) [91-6031]
9/17/91	Judgment MANDATE ISSUED. (une) [91-6033]
9/17/91	Judgment MANDATE ISSUED. (une) [91-6035]
10/10/91	Notice of filing petition for writ of certiorari for Appellant County of Allegany in 91-6031 dated 10.3.91 filed. Supreme Ct#: 91-558. (ona) [91-6031]
10/15/91	Notice of filing petition for writ of certiorari for Appellant State of New York in 91-6031 dated 9.30.91 Supreme Ct#: 91-543. (ona) [91-6031]

Complaint (dated 2/12/90).

UNITED STATES DISTRICT COURT,

NORTHERN DISTRICT OF NEW YORK.

Plaintiffs, by their attorneys, for their complaint against the defendants, allege:

PRELIMINARY STATEMENT

1. This is a civil action by a State of the United States and by Counties of that State for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, declaring and adjudging that the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. §§ 2021b-2021i) (the "Act") is unconstitutional because it violates the Guaranty Clause of the United States Constitution, the Tenth and Eleventh Amendments thereto, the Due Process Clause, and constitutionally protected principles of federalism, and that, therefore, the Act should be declared null and void and of no force or effect.

PARTIES

2. Plaintiff, the State of New York ("New York"), is a State of the United States of America, which includes within its boundaries the geographic area covered by the United States District Court for the Northern District of New York.

3. Plaintiff, the County of Allegany ("Allegany County"), is a political subdivision of the State of New York, located within the geographic area covered by the United States District Court for the Western District of New York.

4. Plaintiff, the County of Cortland ("Cortland County"), is a political subdivision of the State of New York, located

within the geographic area covered by the United States District Court for the Northern District of New York.

5. Defendant, the United States of America, enacted the statute the constitutionality of which is the subject of this complaint.

6. Defendant, James D. Watkins, is the duly appointed and serving United States Secretary of Energy, and as such he is principally responsible for the administration of the Act.

7. Defendant, Kenneth M. Carr, is the duly appointed and serving Chairman of the United States Nuclear Regulatory Commission.

8. Defendant, the United States Nuclear Regulatory Commission ("NRC"), is a commission of the United States Government created pursuant to the Energy Reorganization Act of 1974 (42 U.S.C. §§ 5841-5851) and is a successor to the Atomic Energy Commission. It is responsible for administration of some aspects of the Act.

9. Defendant, Samuel K. Skinner, is the duly appointed and serving United States Secretary of Transportation, and as such he is responsible for the administration of United States laws governing the transportation of low-level radioactive waste.

10. Defendant, Richard Thornburgh, is the duly appointed and serving United States Attorney General, and as such he is responsible for litigation of actions to enforce the laws of the United States of America.

11. Defendants, Watkins, Carr, Skinner and Thornburgh, are each sued in their official capacities only.

JURISDICTION

12. The claim of Plaintiffs is founded upon, and jurisdiction of this action is maintained under, 28 U.S.C. §§ 1331, 1337 and 1346. A declaratory judgment and further relief are appropriate under 28 U.S.C. §§2201 and 2202.

VENUE

13. Venue of this action in the Northern District of New York is proper under 28 U.S.C. §§ 1391(e) and 1402.

BACKGROUND

14. The Act defines low-level radioactive waste ("LLRW") as radioactive material that: (a) is not "high-level" radioactive waste, spent nuclear fuel, or by-product material as defined at 42 USC § 2014(e)(2); and (b) the NRC classifies as LLRW. 42 USC § 202lb(9). Nationwide, about 90% of the volume and 97% of the radioactivity of LLRW, as so defined by the Act, comes from nuclear power plants and other industrial sources; the remainder comes from research laboratories, hospitals and medical centers.

15. In 1970, after the Atomic Energy Commission discontinued issuance of permits for ocean dumping of LLRW, shallow land burial became the exclusive legal method of disposal. In 1971, six commercial shallow land burial disposal facilities existed in the continental United States, including a LLRW disposal facility at West Valley, Cattaraugus County, New York. By 1978, safety problems and leakage of materials contaminated by LLRW led to the cessation of operation of three of these sites, including the facility at West Valley. New York is now engaged in a program, at substantial cost, to improve the West Valley LLRW disposal facility's capability to safely contain the LLRW already there.

16. At present, only three commercial LLRW disposal facilities are in operation in the United States, to wit: in Nevada, South Carolina and Washington.

17. The United States Congress enacted, on December 22, 1980, the Low-Level Radioactive Waste Policy Act (42 U.S.C. §§ 2021b-2021d) which provided that each State was responsible for the disposal of LLRW generated within its borders. It encouraged, but did not require, States to enter into compacts for the establishment of regional LLRW disposal facilities. It permitted each compact to restrict, after January 1, 1986, the use of its disposal facilities to LLRW generated within the geographic area covered by the compact.

18. Congress subsequently passed the Low-level Radioactive Waste Policy Amendments Act of 1985 ("the Act") (42 U.S.C.§§ 2021b-2021i). The Act sets forth a number of "milestones." They are outlined here.

19. Each State must by July 1, 1986 have joined a compact or certified its intent to site its disposal facilities for LLRW in-state. New York has certified its intent to so site and has not joined a compact. Congress may condition its approval of a compact on the member states' consent to the Act's limitations on state sovereignty. Since New York has not joined a compact, it has not consented, by any such joinder, to the limitations on State sovereignty set forth in the Act.

20. By January 1, 1988 each non-compact State must have prepared a siting plan, which New York has done. By January 1, 1990, each non-compact State must either apply for a license for its disposal facility or certify that it will be able to store, manage or dispose of its LLRW after January 1, 1993. New York provided a certification to the NRC on December 27, 1989. States choosing to so certify must apply for a license by January 1, 1992.

21. By January 1, 1993, if a State cannot dispose of its LLRW, any generators or owners of LLRW in that State may request the State to take title to and possession of LLRW generated, and to assume liability if it fails to do so. In the alternative, such a State must forego rebate to the State of portions of certain surcharges previously collected from the generators by sited States and instead such rebates would be paid to the generators. 42 U.S.C. § 2021e(d)(2)(C).

22. Each State must provide for disposal capacity by January 1, 1996. After that date, unsited States must accept possession of, title to, and liability for any LLRW offered by a generator within that state. After that date, the surcharge repayment alternative is not available. 42 U.S.C. § 2021e(d)(2)(C) states in pertinent part:

> If a State . . . in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State . . . by January 1, 1996, each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1996 as the generator or owner notifies the State that the waste is available for shipment.

23. The Act requires that States acquire disposal capacity for three classifications of LLRW. Class "A" wastes have levels of radioactivity that will diminish to the point where after 100 years an inadvertent intruder can safely come in contact with them. Class "B" wastes are more radioactive than Class "A" wastes and less radioactive than Class "C" wastes. Class "C" wastes must be disposed of in a facility that

is designed to protect against inadvertent intrusion for 500 years.

24. Class "A" waste was produced in the United States at the rate of about 1.8 million cubic feet per year in 1987 with annual radioactivity of about 26,000 curies. Class "B" waste was produced in the United States at the rate of about 39,000 cubic feet per year in 1987 with annual radioactivity of about 67,000 curies. Class "C" waste was produced in the United States at a rate of about 8,700 cubic feet per year in 1987 with annual radioactivity of about 180,000 curies. Class "C" waste makes up less than 1% by volume of all LLRW to be disposed of in the nation's facilities, yet it accounts for over 65% of the radioactivity. In other words, the most radioactive LLRW is produced in very small volumes.

25. The annual volume of LLRW shipped for disposal in commercial disposal facilities has dropped by about 55% since 1980 when the Low-Level Radioactive Waste Policy Act was enacted. That volume has dropped since 1985 when the Act was passed. LLRW volumes could drop by another 40 to 50% by 1993 if generators continue to increase their use of LLRW volume reduction techniques. Examples of such techniques include: sorting, decontamination, storage for decay, shredding, incineration and compaction.

26. States and compacts now plan to develop about a dozen LLRW disposal facilities as a consequence of the Act. However, because of technological developments since 1980 and 1985, it is probable that a far smaller number of facilities would accommodate the nations's LLRW.

27. Many disposal costs are fixed and do not vary with the volume of LLRW to be disposed by a LLRW disposal facility. Total disposal costs and unit disposal costs are likely to continue to rise significantly as the annual volume of LLRW falls

and the number of LLRW disposal facilities increases from the three facilities now operating to some higher number built because of the Act.

28. Because of the mandates imposed by the Act, New York was compelled to pass laws providing a structure to accomplish the Federal directive of developing a facility for the disposal of LLRW by January 1, 1996.

29. Under compulsion of the Act, New York enacted a State statute, Chapter 673 of the Laws of 1986. Chapter 673 sets forth a program under which New York: (1) by its Department of Environmental Conservation, would promulgate standards for selecting a disposal method and a site for a LLRW disposal facility; (2) by a Siting Commission, would select a disposal method and a site for a LLRW disposal facility; and (3) by the Energy Research and Development Authority, would build a LLRW disposal facility which would be operational by January 1, 1993. Enactment of a State statute in the nature of Chapter 673 was necessary in order to comply with the Act and to avoid the immediate sanctions for non-compliance with the Act.

30. New York has acted to comply with all three of the milestones of the Art which have already occurred. More specifically, in 1986, New York certified its intent to site its disposal facility for LLRW in-state, rather than elect to join a compact. In 1988, New York prepared a siting plan. In 1989, New York certified to the NRC that New York will be able to store, manage or dispose of its LLRW after January 1, 1993. The Siting Commission provided by Chapter 673 has already identified five potential disposal sites—three in Allegany County and two in Cortland County.

31. New York is proceeding with its site selection process and intends to go forward and continue to comply with the Act pending developments in this lawsuit.

32. The provision of the Act at 42 U.S.C. § 2021e(d)(2)(C) requiring New York to take title to and possession of, and liability for, all LLRW produced within New York (the "take-title" provision) imposes an unreasonable mandate upon New York that is extraordinarily burdensome, compels the expenditure of funds or the incursion of liability without New York's consent, is unprecedented in its intrusiveness, is not of general application to both the public and private sectors, and is preclusive of other options reasonably available to New York, such as requiring generators of LLRW to be liable for its disposal.

33. The Act effectively obligates New York to construct and operate a facility to dispose, not only of Class "A" and "B" wastes, but also of Class "C" wastes. This requirement is unreasonable because Class "C" wastes require special and costly precautions not applicable to Class "A" and "B" wastes, yet Class "C" wastes are produced in such low volume that a proliferation of disposal facilities around the nation for Class "C" wastes is not rational.

34. The need for annual LLRW disposal capacity has declined since Congress passed the Act in 1985 because annual LLRW volumes have declined and are likely to continue to decline. Whatever the national interest in overriding state sovereignty may have been in 1985, that interest is less compelling now.

35. New York has been and continues to be harmed and threatened with further immediate harm by the existence and purported validity of the Act. New York has been compelled to meet the milestones of the Act. Unless the Act is now declared unconstitutional, New York will be forced to continue to exercise its sovereign powers and to spend substantial public moneys before January 1, 1996 to meet the further milestones

of the Act and in order to avoid the risk of liability after January 1, 1996.

36. Allegany and Cortland Counties allege that they have been and continue to be significantly affected by the existence and purported validity of the Act. But for the Act, New York would not have identified as potential disposal sites the sites it has so identified in Allegany and Cortland Counties. Allegany and Cortland Counties allege that the construction or operation of a LLRW disposal facility would significantly affect the county in which such a facility is to be located and the citizens thereof. Allegany and Cortland Counties allege that the identification of potential disposal sites has already caused the counties to incur substantial expenditures for studies, public information, litigation and police services. The counties allege that the public identification of potential disposal sites has had, and will continue to have, significant adverse effects on the social and political fabric of each of the counties.

37. There is now existing between the parties hereto an actual controversy in respect to which Plaintiffs are entitled to have a declaration of their rights and further relief because of the facts, conditions and circumstances as set forth in this complaint.

CLAIM FOR RELIEF

38. Plaintiffs repeat and reallege each and every one of the allegations set forth in paragraphs 1 through 37, inclusive, with the same force and effect as if fully set forth at length herein.

39. The Act violates the Guaranty Clause of the United States Constitution, Article IV, section 4, by depriving the citizens of New York of the autonomy necessary to exercise

through their representatives a republican form of government.

40. The Act is an unprecedented infringement of New York's sovereignty because it compels New York, solely because it is a State, to employ its sovereign legislative and executive powers to fund, locate, design, build, regulate and maintain a LLRW disposal facility and, as necessary, to commence and resolve litigation in the Courts of New York in support of the implementation of a national policy dictated to New York by Congress.

41. The Act is an unconstitutional abridgement of New York's sovereignty because it effectively precludes New York from freely employing (if it were so to choose) the sovereign powers, which it would otherwise have available, to condition future generation of LLRW within its borders upon the availability of disposal capacity to be provided by the generator.

42. The take-title provision purports to regulate New York as a sovereign State, compels New York to act and to refrain from acting in matters which are indisputably attributes of State sovereignty, imposes strict, vicarious liability on New York, and impairs New York's ability to structure integral operations in areas of traditional governmental functions, all without any overriding federal interest of a nature which would justify New York's submission.

43. Moreover, extraordinary defects in the national political process render the Act invalid. The take-title provision was not originally proposed by any State or regularly reported out of any Congressional committee. Instead, it was a last minute creation added by Senate amendment to the House bill and accepted by the House of Representatives on the same day, the last day of the 1985 session. The States and their representatives in Congress could not effectively review or debate the

provision before voting on the Act. New York was deprived of the right to effectively participate in the national political process and it was left politically powerless to meaningfully participate. The passage of the Act itself undermined the principles of federalism on which the national political process depends. The national political process did not properly protect the sovereignty of all the States including New York.

44. The Act contains no severability clause and is not severable. Any constitutional portions of the Act are incapable of enforcement as Congress intended, without reference to the unconstitutional portions of the Act. Therefore, any constitutionally defective portion renders the entire Act invalid.

45. The Act is unconstitutional because it unlawfully intrudes on the sovereignty of New York in violation of the Tenth Amendment to the Constitution of the United States.

46. Pursuant to the take-title provision of the Act, the states which are without disposal capacity by January 1, 1996, must, among other things, be liable for all damages, directly or indirectly, incurred by a generator or owner as a consequence of the failure of the State to take possession of the LLRW.

47. The take-title provision of the Act purports to subject New York to vicarious, strict liability without fault by New York if it fails to comply with the milestones of the Act mandated in derogation of New York's sovereignty. The provision purports to make New York liable for damages arising from the claims of generators, owners or persons injured by LLRW, even though New York in effect has been deprived by federal law of the full range of powers which it would otherwise have to prohibit or regulate the generation or importation of LLRW.

48. New York has not consented to be sued for such damages, or to be vicariously liable for the acts of generators and owners of LLRW, in either state or federal courts.

49. The take-title provision of the Act purports to impose liability on New York solely because it is a sovereign state and not because it shares any characteristic of private proprietary generators or owners of LLRW.

50. New York retains its traditional sovereign immunity except for limited waivers of such immunity as specified by statute.

51. The take-title provision of the Act constitutes a coerced waiver of sovereign immunity and Eleventh Amendment immunity because it allows findings of liability against New York, with no such express waiver or uncoerced consent having been given by New York.

52. The Congress of the United States has not made clear its intent to abrogate the Eleventh Amendment immunity of the states by virtue of the Act, and in the absence of such clarity, there can be no abrogation of such Eleventh Amendment immunity.

53. Even if Congress had clearly intended to abrogate the Eleventh Amendment immunity of the states, the Act purports to impose liability on states, solely because they are states and not because of any act or negligent omission of any state, without imposing liability on generators or owners of LLRW.

54. As a result of the foregoing, the take-title provision of the Act violates the Eleventh Amendment to the Constitution of the United States, by purporting to impose liability without New York's consent, and therefore the Act should be declared null and void and of no force or effect.

55. Allegany and Cortland Counties allege that the Act, which is unconstitutional, has injured and will continue to injure them by reason of the substantial expenditures and disruptions caused by the public identification of potential disposal sites in each county. The counties allege that actual construction and operation of a LLRW disposal facility in either county would have significant additional adverse effects on that county.

56. Plaintiffs are entitled to a declaratory judgment declaring the Act unconstitutional, and further declaring that the entire Act is null and void and of no force or effect.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment on their claim for relief declaring that the Act is null and void and of no force or effect, together with such other and further relief as to the Court may seem just and equitable.

Dated: February 12, 1990

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Affidavit of Delores Cross in Opposition to Motion to Dismiss Complaint (dated 9/5/90).

STATE OF NEW YORK)
COUNTY OF ALLEGANY) SS:

DELORES CROSS, being duly sworn deposes and says:

1. I am the Chairman of the Board of Legislators of the County of Allegany, New York ("the County"). I submit this Affidavit in opposition to the motion of the Defendants United States of America, *et al.*, to dismiss the Complaint in the above referenced matter. This affidavit is also submitted in support of the motion for summary judgment of Plaintiff the State of New York.

2. As shown below, the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. §2021b *et seq.* ("the Act") mandates that the governments of the State of New York and its political subdivisions become unwilling agents of the national government. The Act forces the States to be "responsible" for low-level radioactive waste generated within the State by either (a) developing a disposal facility either alone or in a compact with other states, (b) assuming title and possession of the waste, or (c) by being subject to liability for any failure to take title and possession. Therefore, the Act requires the State of New York, and its political subdivision, Allegany County, to exercise its sovereign powers to carry out a federal policy. This requirement violates the Guaranty Clause, Article IV Section 4, and the 10th and the 11th Amendments to the United States Constitution.

A. *The Act Violates the Constitutional Guarantee of a Republican Form of Government.*

3. As alleged in the Complaint in this action, New York State has been forced to enact legislation (29 E.C.L. §0101 *et seq.*), regulations (6 N.Y.C.R.R. Part 382) and to proceed with the proposed siting of a low-level radioactive waste disposal facility because of the sanction provisions of the Act. The law and regulations enacted by the State of New York provide for a commission to select a preferred disposal method and site for a low-level radioactive disposal facility to be located in New York State. The various agencies of the State of New York and its political subdivisions are required to "cooperate" in this process.

4. In September, 1989, the New York State Low-Level Radioactive Waste Disposal Siting Commission ("the Commission") designated three potential sites of approximately one square mile in size for a low-level radioactive waste disposal facility in the Allegany County Towns of Caneadea, West Almond and Allen. These three sites were selected from a candidate area previously identified by the Commission.

5. Immediately after a candidate area was identified in Allegany County, the Board of Legislators of Allegany County enacted on January 23, 1989, Resolution No. 45-89. This resolution protested the selection of the County and indicated the "irrevocable" opposition of Allegany County to the location of a disposal facility in the County. A copy of this resolution is annexed hereto as Exhibit A. On February 9, 1990, the Board of Legislators passed Resolution No. 63-90 authorizing the County to join as a plaintiff in this action to challenge the constitutionality of the Act. A copy of such resolution is annexed hereto as Exhibit B.

6. On various dates during late 1989 and the early part of 1990, the Commission attempted to gain access to the three sites in Allegany County to initiate so-called "precharacterization" studies. The Commission was prevented from entering such sites by citizens of Allegany County. Unfortunately, these confrontations have resulted in numerous court proceedings and the arrests of citizens of Allegany County. The last incident in April, 1990, lead to an episode between Troopers of the State of New York Police and citizens of the County who were on horseback. A newspaper article describing this confrontation is annexed hereto as Exhibit C.

7. The citizens of Allegany County by public comment to the Board of Legislators, town boards and by the actions of various citizens' groups have made clear that they oppose the possible location of a low-level radioactive waste disposal site in Allegany County. Various businesses and educational institutions have also expressed their opposition to such a facility in the County. The Board of Legislators and County officials have all agreed that such a disposal site would be deleterious to the County.

8. Nevertheless, the County has been forced by the terms of the Act and resulting actions by the State of New York to act as "agents" to carry out the policy of the Act.

9. For example, the Sheriff of Allegany County has been forced to serve civil process and to accompany members of the Commission Staff on various attempted visits to the potential sites. Allegany County facilities such as the County jail, County Courthouse and other buildings have been used for the purpose of holding citizens who have been charged with impeding the actions of the Commission. The Allegany County District Attorney and his staff have been forced to become involved in criminal prosecutions of citizens who allegedly illegally impeded the siting process. At various

times the State of New York has indicated that the County may have to invoke the "mutual aid" system for additional police protection. Once such "mutual aid" is requested, the County becomes financially liable for the service provided. Innumerable hours have been spent by officials of Allegany County in setting up procedures to attempt to avoid violence during the siting process.

10. All of these actions and expenditures of funds are the direct result of the Act, and the resulting State government reaction, and are against the wishes of the citizens of Allegany County. The various officials of Allegany County, against their will and the will of their constituents, have become agents of the federal government and forced to carry out the Congressional mandate with respect to low-level radioactive waste.

11. The Act has caused damage to the vital relationship between the people of Allegany County and their elected representatives. The compact between them has been broken. The United States Constitution, Article IV Section 4, guarantees to the States a Republican Form of Government—one in which the people control the government. However, the government of the State of New York and the government of Allegany County, with respect to the issue of low-level radioactive wastes, are no longer controlled by their citizens but by the federal government. The State and County governments have been forced and will be forced to exercise their sovereign powers, including police powers, eminent domain and taxing powers to execute a policy that our citizens vehemently oppose. Certainly, nothing could be more destructive of the "Republican Form of Government" than this.

B. *The Act has Jeopardized the Future of the County.*

12. The mere designation of the County as potential sites for low-level radioactive waste disposal facility have harmed the County financially. In order to respond to the work of the Commission and to insure the health and welfare of its citizens, the County has been forced to expend considerable funds for special legal and technical consultants. If the siting process continues, the County will be forced to expend funds for consultants to be involved in studies concerning disposal methods, the Commission's environmental impact statement, preparation for adjudicatory hearing on method selection, review of the siting process and resulting adjudicatory hearing and the provision of public information for the Allegany County community. As the process continues, the financial impact on the County will only increase. The County has approximately 50,000 residents and the financial impact on each of them for such activities is severe.

13. Moreover, individual County landowners have been harmed by the County being named as a potential site. Land values in the affected areas have dropped. Loans for further development of these properties and neighboring properties will be difficult, if not impossible, to obtain.

14. The citizens of the entire County, and, in particular, the citizens of the affected areas, have been subject to emotional stress and duress. Given the history of the nuclear industry in this country, this concern is understandable. The combination of operational practices, water infiltration and seepage through trench caps led to the closure of the West Valley, New York facility only 12 years after opening. The West Valley facility is located only fifteen miles away from the border of Allegany County. The Maxey Flats, Kentucky site also experienced an ingress of water which led to the migration of harmful radionuclides from the burial sites. Cleanup costs at various radio-

active waste disposal sites across the country have ranged from $7 million to billions of dollars.

15. Our citizens are not only concerned for their own welfare and the natural resources around them, but for their children's and grandchildren's future. The very real potential of debilitating cancerous diseases and genetic damage has frightened our citizens. This has led many people to pledge that they will do whatever is necessary to prevent the siting of a facility in Allegany County. Many County officials have grave concern for the potential of violence in our County.

16. The potential impact of the siting of a disposal facility on the County's industries would be severe. Agriculture is Allegany County's leading industry at this time. The three potential sites in the County include many acres of land which contain valuable soil groups and which have potential for active agricultural development. The County also relies heavily upon groundwater in the area for drinking water. All of the three sites in Allegany County are located within close proximity of potentially very productive aquifers of the Genesee River Valley. The Genesee River Valley could be a supply of potable water for the future growth of Allegany County if it is properly protected.

17. There are also untapped reserves of oil and gas that are located in the County. With the quickly rising price of petroleum products and the crisis in the Persian Gulf, these resources are becoming more competitive for development. Yet, the potential of a siting of a low-level radioactive waste disposal facility endangers such vital development. Oil and gas wells have been drilled throughout the County since the 1860s. Any leakage of radionuclides could quickly migrate and might contaminate oil and gas reserves rendering them useless. Certainly, no development of oil and gas reserves could take place at the site of a disposal facility.

18. The quality of life in Allegany County would be dramatically affected by the location of a low-level radioactive waste disposal site in the County. The stigma associated with such a site would certainly have severe consequences for area business, tourism and the day to day lifestyle. Already, the leaders of the Amish community located in Allegany County, which constitutes an important part of the agricultural community, have indicated that their community will move from the County if such a disposal facility is located here. Many other citizens have made the same statement to me. One can only imagine that with people unwilling to live in the County, businesses would soon leave because of the lack of employable workers and customers.

19. Even if the State were to decide not to build such a facility, Allegany County and its citizens would be affected by the Act. A decision by the State of New York not to build a disposal facility would result in the State of New York being liable for the low-level radioactive waste generated in the State. The resulting drain on the State treasury is incalculable and would certainly result in increased taxes for the citizens of Allegany County and a lack of funds from the State to Allegany County for needed programs.

WHEREFORE, for the foregoing reasons, it is respectfully requested that this Court deny the Defendants' motion to dismiss the Complaint in the above referenced matter and grant the motion of the State of New York for summary judgment declaring the Act to be unconstitutional.

(Sworn to by DELORES CROSS, September 5, 1990.)

Exhibit A—Resolution No. 45-89.

TITLE: IRREVOCABLY OPPOSING THE SITING OF A LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY IN ALLEGANY COUNTY; DEMANDING A THOROUGH RESEARCH AND INVESTIGATION BY STATE OF COUNTY ISSUES AND CONCERNS

Offered by: Planning and Historical Committee

WHEREAS, the Allegany County Board of Legislators, pursuant to Resolution No. 23-89, initially determined that the siting of a low-level radioactivity waste disposal facility would not be in the best interest of Allegany County, and

WHEREAS, the Planning and Historical Committee of the Board was directed to report to this Board appropriate proposals or positions in regard to the siting of a low-level radioactive waste disposal facility in Allegany County, and

WHEREAS, the Planning and Historical Committee has received both public and local government opinion as to the local impacts such siting would create if established in the County, and

WHEREAS, the Planning and Historical Committee has rendered its report to this Board, and

WHEREAS, from such report it appears that the State selected candidate area within Allegany County is not suitable for the siting of such facility due to the existence of principal aquifers in such area and the threat to them should facility failure occur, and

WHEREAS, it further appears that such area is not suitable for the siting of such facility since such area has the highest rate of soil and streambank erosion in New York State and this poses a threat of damage to such facility, and

WHEREAS, it further appears that such area is not suitable for the siting of such facility due to the close proximity of Keaney Swamp and the potential threat to this resource should facility failure occur, and

WHEREAS, it further appears that such area is not suitable for the siting of such facility due to the close proximity of such area to the Clarendon-Linden Fault and to several geologic thrust faults under such area, which exacerbate the potential for facility failure if an earthquake occurs, and

WHEREAS, it further appears that such area is not suitable for the siting of such facility due to the existence of known, and the potential existence of yet unidentified, gas and oil wells, be they producing, non-producing or exploratory, within such area, that would provide pathways of migration for radionuclides should facility failure occur, and

WHEREAS, it further appears that the mineral resources, particularly oil and natural gas, within such area, are abundant based on levels of past exploration, and that the siting of such facility could eliminate the extraction of these resources, and

WHEREAS, it further appears that such area is not suitable for the siting of such facility due to the close proximity of such area to the Genesee River, a major ground water discharge zone, which serves as a source of potable water for residents north of such area along its entire course to Lake Ontario, and

WHEREAS, it further appears that such area is not suitable for the siting of such facility due to the great distance of such area from major low-level radioactive waste generators in

New York State, in that such distance creates an increased probability and threat of vehicular accident in the transporting of radioactive waste thereby heightening the danger to residential communities and compromising the public safety, and

WHEREAS, it further appears that the siting of such facility would result in a detrimental impact to the potential growth, both economic and social, of Allegany County that is expected to occur through implementation of the New York State sponsored Ceramic Corridor Program at and in the vicinity of Alfred, New York, and

WHEREAS, it is the opinion of the Planning and Historical Committee that the New York State Low-Level Radioactive Waste Siting Commission Document entitled "Candidate Area Identification Report" data utilized and applied in selecting such area that is stale and of questionable accuracy, now, therefore, be it

RESOLVED:

1. That this Board of Legislators of the County of Allegany irrevocably opposes the siting of a low-level radioactive waste disposal facility in Allegany County.

2. That demand is hereby made that the New York State Low-Level Radioactive Waste Siting Commission and the New York State Department of Environmental Conservation thoroughly research and investigate the social, economic and environmental issues and concerns set forth in this resolution in the event the Allegany County candidate area remains a potential siting for such facility.

I, Linda J. Canfield, Clerk of the Board of Legislators of the County of Allegany, State of New York do hereby certify that the foregoing constitutes a correct copy of the original on file

in my office and the whole thereof of a resolution passed by said Board on the 23rd day of January, 1989.

Dated at Belmont, New York this 23rd day of August, 1990.

Linda J. Canfield
Clerk, Board of Legislators
Allegany County

Moved by Cross Seconded by Sylor VOTE: Ayes 15 Noes 0 Absent 0

Exhibit B—Resolution No. 63-90.

TITLE: A RESOLUTION TO JOIN AS A PLAINTIFF WITH THE STATE OF NEW YORK AND CORTLAND COUNTY IN AN ACTION TO DECLARE THE FEDERAL LOW-LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985 UNCONSTITUTIONAL; AUTHORIZING COUNTY ATTORNEY AND SPECIAL COUNSEL TO ACT AS COUNSEL; PROVIDING THAT COUNTY PARTICIPATION IN SUCH ACTION SHALL BE WITHOUT PREJUDICE TO CERTAIN ENUMERATED POSITIONS OF THE COUNTY; REQUESTING STATE OF NEW YORK TO CEASE SITING PROCESS AND TO BRING A PRELIMINARY INJUNCTION MOTION TO STAY ENFORCEMENT OF SUCH ACT.

Offered by: Ways and Means Committee

WHEREAS, on or about January 15, 1986, the Congress of the United States passed the Low-Level Radioactive Waste Policy Amendments Act of 1985 ("the Act") which provided that each State was responsible for the disposal of low-level radioactive waste ("LLRW") generated within its border, and

WHEREAS, the Act provided that each State not participating in an interstate compact for the disposal of LLRW generated with the State, and

WHEREAS, any State that fails to prepare such a disposal plan and to implement such plan on certain milestone dates is subject to the loss of certain funds collected by the federal government, barred from shipping LLRW to interim disposal facilities and required to take either title and possession of the LLRW generated or to assume liability for such LLRW, and

WHEREAS, the State of New York, because of the coercive provisions of the Act, enacted into law Environmental Conservation Law § 29-0101 *et seq.* which established a siting commission to select a disposal method and a site for a LLRW disposal facility, and

WHEREAS, in September, 1989, the siting commission selected three potential sites in Allegany County and two in Cortland County for the siting of such disposal facility, and

WHEREAS, the Board of Legislators of Allegany County and various citizens groups have protested the methodology and conclusions of the siting commission, and

WHEREAS, the Board of Legislators of Allegany County and various of its citizens have protested to the Governor of the State of New York the State's actions and have raised the issue of the constitutionality of the Act, and

WHEREAS, the Governor of the State of New York, Mario Cuomo, instructed the Attorney General of the State of New York, Robert Abrams to commence an action to challenge the constitutionality of the Act, and

WHEREAS, in January of 1990 the Attorney General's Office contacted special counsel for Allegany County, Harter, Secrest & Emery, and requested that Allegany County and Cortland County join as plaintiffs with the State of New York in the federal court action challenging the constitutionality of the Act, and

WHEREAS, Cortland County has decided to join in such action, and

WHEREAS, special counsel for Allegany County, Harter, Secrest & Emery has recommended that the County join in such action, now, therefore, be it

RESOLVED:

1. That the County of Allegany join as a plaintiff with the State of New York and the County of Cortland in an action seeking to declare the Act unconstitutional.

2. That the County Attorney, James T. Sikaras, and Special Counsel, Harter, Secrest & Emery, are authorized to act as counsel for the County of Allegany in such action.

3. That the County Attorney and Special Counsel inform the State of New York that participation of the County of Allegany in this action is without prejudice to the County's position that (1) the siting process should be stopped; (2) that the siting commission's methodology and conclusions have been flawed; and (3) that the low-level radioactive waste disposal facility should not be located in Allegany County.

4. That the County Attorney and Special Counsel are directed to request the State of New York to immediately cease the siting process and to request the State of New York to bring a preliminary injunction motion staying the enforcement of the Act.

PREPARED BY COUNTY ATTORNEY PER FEBRUARY 8, 1990 ORDER OF BOARD CHAIRMAN.

I, Linda J. Canfield, Clerk of the Board of Legislators of the County of Allegany, State of New York do hereby certify that the foregoing constitutes a correct copy of the original on file

in my office and the whole thereof of a resolution passed by said Board on the 9th day of February, 1990.

LINDA J. CANFIELD
Clerk, Board of Legislators, Allegany County

Dated at Belmont, New York this 9th day of February, 1990.

Moved by Sylor Seconded by Watson VOTE: Ayes 15 Noes 0 Absent 0

Exhibit C—Newspaper Article.

Allegany County

TWO INJURED IN PROTEST AT SITE, 49 ARE ARRESTED

By JOHN T. EBERTH
and MARK WHITEHOUSE
Times Herald Staff Writers

CANEADEA — Two people — a state trooper and a protester — were injured Thursday in a clash between protesters and police as the state's radioactive waste siting commission tried to get onto the proposed nuclear disposal site in Caneadea.

Thirty-nine people were arrested, two on felony charges and the others on charges of disorderly conduct. Disorderly conduct constitutes a violation.

State police, the county sheriff, and a three-man team from the siting commission had gotten past several barriers and were heading toward the site on foot when nine masked protesters on horses came toward them.

A horse stepped on the foot of State Police Sgt. Samuel Taglienti, who is based in Boston, N.Y. He was treated and released at Jones Memorial Hospital for the injury. It is still unknown how serious the injury is, although Troop A Commander Lt. Charles McCole said Sgt. Taglienti's foot was not broken.

Also injured was Karl J. Root, 28, of Bolivar, who was reportedly riding the horse that stepped on the sergeant's foot.

He was taken into custody, then treated at Jones Memorial Hospital for bruises and abrasions on one hand and "soft tissue injuries" on the other hand, said his lawyer, Patricia Fogarty.

ROOT WAS charged with second degree assault, a class C felony; attempted second degree assault, a class D felony, and resisting arrest.

Another of the riders, Donald W. Middaugh, 23, of Friendship, was charged with second degree attempted assault and resisting arrest. He was reportedly not hurt.

Protesters were shouting "Police brutality" and "Way to go, New York's finest!" as the two horsemen were escorted away.

The siting commission did not reach the Caneadea site. Lt. McCole called off the attempted walkover after the incident with the horses, saying he couldn't justify risking further violence.

County Sheriff Larry Scholes said the siting commission reported no plans to return for another walkover attempt. "They plan to leave this in (Supreme Court Justice Jerome Gorski's) hands," he said. "They're going to try the injunction route."

The commission has an injunction barring anyone from interfering with its attempts to get on the three potential Allegany County dump sites; violators are subject to a maximum $1,000 fine and 30 day's imprisonment.

BOTH MIDDAUGH and Root were taken to Wellsville state police headquarters for processing. They were later arraigned before Willing town justice Richard Tompkins, who released both men on their own recognizance. They are scheduled to return to court at 8 p.m. April 25, although the case may be transferred to another court before that, Ms. Fogarty said. She said she is not sure who will ultimately represent the two men. She and three other attorneys have volunteered to work with Alfred attorney Jerry Fowler to represent protesters. The nine horses bearing masked riders met the police on East Hill Road at 1:45 p.m.

The lead horse, driven at a gallop, nearly ran into the line of police. One trooper in front had to veer away to avoid being hit

by the horse. The other horses were then turned sideways and walked in front of the troopers to stop their advance.

At that point, several troopers drew their night sticks and attempted to continue their advance.

POLICE TOOK the reins of one horse and attempted to arrest its masked rider. But the rider refused to dismount, nearly toppling the horse as troopers attempted to pull him off it.

Several troopers attempted to separate the man from his mount, but the reins were wrapped around his hands. One trooper used the short end of his baton to rap the man's hands free. He was then dragged to the ground and handcuffed.

At 1:52 p.m. two of the horsemen had been arrested and Lt. McCole called off the advance.

"I think we used what necessary force was needed to complete the arrest," said State Police Lt. Charles McCole after the incident.

Afterward, Lt. McCole said he was confident his troopers could have gotten the commission onto the site, but said he called off the advance to avoid further violence.

"An incident took place that I thought could have resulted in a short-term riot," he said. "At that time we decided to disengage."

LT. McCOLE SAID he felt "one of the horses brush up against me," and that he was concerned for everyone's safety when the horses blocked the road.

He called the uses of the horses to block the troopers "an unnecessary and dangerous act."

"Masked men on horses — it's like something out of the wild west," he added.

Several protesters said state police may have violated the civil rights of those arrested and may have used unnecessary violence.

"If someone wants to file a complaint and they don't feel comfortable talking to me, there is a troop commander in Batavia they can talk to," Lt. McCole told them.

"As to the conduct of my troopers, I'm extremely proud of them," he said. "If you believe there has been a violation of anybody's civil rights, the FBI is the agency that would handle the complaint," Lt. McCole added.

Bruce Goodale, director of the site-selection process, witnessed the fracas but hinted the violence won't dissuade him from attempting to conduct a site walkover at Caneadea in the future.

"Today is today and tomorrow we have to make our plans based on what we learned today," he said. "Obviously we're not getting on the site today so we'll have to quit." On Thursday, Sheriff Scholes said he supported Lt. McCole's decision to pull out of Caneadea. "It was a dangerous situation," the sheriff said. "It was dangerous from the word 'go,' not because of the troopers."

He said introducing horses into the situation was an unwise decision.

Affidavit of Cindy M. Monaco in Opposition to Motion to Dismiss Complaint (dated 9/5/90).

Cindy M. Monaco, being duly sworn, deposes and says:

1. I am the Cortland County Low-Level Radioactive Waste (LLRW) Coordinator. My office is located in Room 204, County Office Building, 60 Central Avenue, P.O. Box 5590, Cortland, New York 13045.

2. I have been employed in this position since 3 February 1989. My responsibilities as the coordinator on the LLRW issue include research regarding the generation and management of LLRW and the education of the public on such matters.

GENERATION OF LLRW

3. LLRW is commercially generated from a variety of sources, which include the generation of electricity by the utilities, industrial research and manufacturing processes, diagnostic and medical services, and government research. (DOE/LLW-69T)

4. In reporting information concerning LLRW production, commercial generators provide figures regarding both volume and radioactivity. In terms of judging the biological hazard associated with the waste, it is the amount of radioactivity which is the significant factor.

5. Since 1983, in reporting information regarding volume and radioactivity of LLRW produced in the nation, five (5) categories were established which indicate the source of commercially generated LLRW. These categories consist of utility, industrial, medical, academic, and government waste.

6. Although the relative contributions to the waste stream from each of the generators and the total amounts of waste produced may vary drastically from year to year, nuclear power generation accounts for the majority of the volume and radioactivity of the nation's commercially generated LLRW.

RELATIVE CONTRIBUTIONS TO THE WASTE STREAM

7. The *1987 State-by-State Assessment of Low-Level Radioactive Waste Received at Commercial Disposal Sites* (DOE/LLW-69T, Tyron-Hopko and Ozaki, 1988) shows that, in 1987, utility, industrial, government, academic, and medical waste accounted for 51.0%, 39.1%, 7.1%, 1.6%, and 1.2%, respectively, of the volume of commercially generated LLRW in the United States. The radioactivity, which is the pertinent statistic regarding biological hazard, is reported as follows: utility.- 81.6%; industrial - 15.6%; government - 2.6%. The radioactivity due to medical and academic sources was negligible.

8. According to the New York State LLRW Siting Commission's *Executive Summary—Source Term Report: Low-Level Radioactive Waste Projection for New York* (July 1989), 98% of the total radioactivity to be deposited in a 60-year New York State facility will be due to utility waste. Nuclear power generation is expected to account for 70% of the total volume to be deposited in the proposed New York State facility. (These figures include decommissioning and dismantling of two nuclear power reactors.)

9. Since the preparation of the Siting Commission's *Source Term Report*, Cintichem, Inc., an industrial generator of radiopharmaceuticals, has ceased production. This results in revised estimates concerning the relative contribution of New York State's generators to the waste stream. With the elimination of

Cintichem's waste stream, nuclear power plant waste is expected to account for more than 99% of the total radioactivity to be deposited in the 60-year New York State facility.

10. According to the Siting Commission's estimates, medical and academic waste is expected to account for less than 0.2% of the total radioactivity in the proposed New York State facility.

CLASSIFICATION OF LLRW

11. In accordance with United States Nuclear Regulatory Commission (NRC) regulations, the low-level waste stream is divided into three (3) categories: Class A, Class B, and Class C. As per NRC regulations, Class A, B and C wastes would require isolation from the environment for 100, 300, and 500 years, respectively.

12. The classification scheme for LLRW is determined solely by the federal government, specifically the NRC in 10 CFR Part 61. Classification into the A, B, and C categories depends on an interplay between isotope concentration and half-life (the amount of time it takes for half of the mass of a radioactive substance to decay). "In general, 'Class A' wastes contain either very low concentrations of radioactive materials with long half-lives, or relatively low concentrations of radioactive materials with short half-lives; 'Class C' wastes can contain moderate concentrations of long-lived radioactive materials, or high concentrations of radioactive materials with short half-lives. 'Class B' wastes are intermediate in their content of long- and short-lived radioactive materials." (New York State Department of Health, *General Information on Low-Level Radioactive Waste Disposal in New York State*). Some examples of isotopes found in LLRW and their associated half-lives include:

Iodine-129 (16 Million Years); Thorium-232 (14 Billion Years); Uranium-235 (704 Million Years); Uranium-238 (4.7 Billion Years); Cobalt-60 (5.27 Years); Tritium (12.3 Years). (Figures are from NYSERDA, *1988 NYS LLRW Status Report*, June 1989). In determining waste classifications, the NRC regulations do allow for concentration averaging and, hence, dilution of the waste forms.

13. In general, a radioactive substance which has undergone ten to twenty decay periods (half-lives) is deemed to have reached background levels in terms of its radioactivity content. While the NRC has specified isolation periods of 100, 300, and 500 years for Class A, B, and C wastes, respectively, this does not mean the emissions from those materials have reached background levels. Clearly, given the long half-lives of a number of the isotopes found in LLRW, the radiological component of a variety of low-level wastes will persist in the environment for periods well beyond the time intervals prescribed by the NRC.

14. A subset of the low-level waste stream which is proving to be extremely problematic is "mixed waste". Mixed waste is waste that is classified as both radioactive waste and hazardous. It is dually regulated by the NRC and the United States Environmental Protection Agency (EPA) for its radiological and hazardous components, respectively. In its November 1989 report, *Partnerships Under Pressure*, the office of Technology Assessment (OTA) reported:

> Some specific regulations cannot be met, some regulations may be in conflict and inconsistent, and other regulations overlap and are duplicative. Although mixed LLW (low-level waste) comprises less than 10 percent of all LLW, it has been identified by States as their major concern in managing LLW. No disposal facility for mixed LLW has been available since 1985.

> Also, no offsite storage or treatment facility is available. Since mixed LLW is a subset of LLW, States will have to be able to manage their mixed LLW if they are to meet the milestones of the LLRWPAA."

Current disposal figures do not include mixed waste volumes since no disposal sites exist which accept these materials. According to the OTA, "It is estimated that mixed LLW would increase the national volume of nonmixed LLW by 3 to 10 percent."

15. Typically, Class A material, the least hazardous constituent of the waste stream, comprises the largest percentage of the total volume of waste produced; yet, Class A waste accounts for a very small portion of the total radioactivity. In sharp contrast, Class C waste generally accounts for a minor percentage of the total LLRW volume, but comprises the vast majority of the radioactivity.

16. The Siting Commission's *Source Term Report* (July 1989) projects that, in a 60-year New York State facility, Class C waste will account for 93.6% of the total radioactivity of the waste stream. (Class A and B materials will account for 3.1% and 3.3%, respectively, of the total radioactivity.)

WASTE GENERATION & MANAGEMENT: CLASS A vs. CLASS C

17. With the exception of sealed sources, in both New York State and the rest of the nation, LLRW produced by medical and academic institutions is Class A waste. The New York State Energy Research & Development Authority's (NYSERDA's) *1987 Low-Level Radioactive Waste Status Report* shows that, in New York State in 1987, only 60 cubic feet (0.3 curies) of Class C waste was due to medical and academic sources. The remaining 24,152 cubic feet of medical

and academic waste was Class A material. In New York State in 1988, all 16,522 cubic feet of medical and academic waste was Class A (NYSERDA, 1989). On a national level in 1987, medical and academic generators shipped 72 cubic feet, and less than 2 curies, of Class C waste for disposal.

18. According to NYSERDA (June 1989), in New York State nuclear power reactors were solely responsible for the generation and disposal of 12,800 curies of Class C waste in 1988. In addition, the vast majority of Class C waste which is expected to be disposed in the proposed New York State facility will be due to nuclear power generation and will include irradiated reactor components, resins, filters, and sludges. On a national level, utility waste accounted for the shipping of 7,485 cubic feet and 175,023 curies of Class C waste. In 1987, utility generators accounted for more than 99% of the total radioactivity of the Class C waste that was shipped for disposal in the nation (Tyron-Hopko & Ozaki, December 1988).

19. According to *The 1987 State-by-State Assessment of Low-Level Radioactive Wastes Received at Commercial Disposal Sites* (Tyron-Hopko & Ozaki, December 1988), Class C waste accounted for only 0.5% of the nation's total volume of commercially generated LLRW that was shipped for disposal. Elimination of the requirement for state responsibility of Class C waste will not create an "orphan" waste for which management capabilities will not exist. The volume of Class C waste represents an insignificant percentage of the total volume of LLRW generated in the U.S. If a federal high-level radioactive waste (HLRW) repository is developed, the addition of Class C LLRW should pose no technical or health and safety difficulties. In the likely event that development of a HLRW repository is delayed, Class C waste could be temporarily stored at the reactor site with the spent fuel. Given the small volume of Class C waste and its activity, which is no greater

than HLRW, this alternative should result in no unresolved technical or safety issues.

20. Management requirements (waste form, packaging, institutional control period, level of shielding) for Class A waste differ greatly from those for Class B and C materials. Thus, the provisions required for the safe management of virtually all medical and academic waste are very much different from those needed to effectively manage utility waste.

TRENDS IN WASTE GENERATION

21. The passage of the LLRW Policy Act of 1980 was due, in part, to the increasing volumes of waste which were being produced at the time (GAO/RCED-83-480). A 1983 General Accounting Office (GAO) report indicates that the Department of Energy (DOE), in 1980, projected that a total of five (5) to seven (7) disposal sites would be needed nationwide by 1990 in order to dispose of the country's commercially generated waste. This was prior to the advent of waste reduction techniques (such as supercompaction, incineration, and decontamination) which have drastically decreased the volume of LLRW generated nationally. In 1980 the nation generated 3.77 million cubic feet of commercial LLRW. By 1988, the U.S. generated 1.43 million cubic feet of commercial LLRW, which represents a national decrease of 62%. Thus, the DOE projections severely overestimate the number of disposal sites necessary to accommodate the nation's LLRW.

22. In *Partnerships Under Pressure* (November 1989), the OTA reported that, by 1993, waste volumes could decline another 50% from 1988 figures. The OTA cautions that volume is a major determinant of unit disposal cost. Smaller volumes will mean higher per unit disposal fees because of the fixed nature of many of the development and maintenance costs associated with LLRW disposal sites. With the nation's

shift to a dozen or more facilities, unit disposal costs are expected to rise dramatically. It is unclear if medical and academic generators will be able to afford to use the new facilities.

ECONOMIC VIABILITY

23. It has been estimated that 300,000 to 400,000 cubic feet of LLRW is required to make one disposal facility economically feasible. In several of the existing compacts and in the case of New York State, projected volumes fall well below those limits. New York State is expected to produce an average of approximately 100,000 cubic feet per year over a 60 year period.

24. In addition, in New York State, there is nothing to preclude generators from shipping waste out-of-state for disposal in the event that an out-of-state facility is amenable to accepting such waste. This further jeopardizes the economic viability of the disposal site.

25. Finally, the NRC recently released a policy statement concerning exemptions of certain portions of the low-level waste stream from regulatory control. According to the Nuclear Information and Resource Service, such a policy, if adopted into regulation, would eliminate approximately 30 percent of the volume of waste which is currently classified as LLRW. This additional decrease in waste volume would further jeopardize the economic viability of many of the planned disposal facilities.

DISPOSAL FEES

26. The Michigan Department of Management and Budget (Detroit Free Press, 16 March 1989) estimated the cost of developing a single disposal facility at $300 million. It further

estimated the unit disposal fees at the proposed Michigan facility to be in excess of $300 per cubic foot. (By comparison, as of February 1990, the estimated cost of disposal at the proposed California facility was $140 per cubic foot.)

27. A 6 June 1988 report from Washington State Senator Williams to Phil Moeller, Lead Analyst of the Energy & Utilities Committee, examines the implications which are likely to result from the Hanford facility becoming an in-region only site. The basic disposal fee is anticipated to more than double once the site restricts itself to accepting waste from only its compact members.

28. The OTA estimates that, depending on waste volume and disposal technology, per cubic foot disposal fees for non-mixed LLRW could vary from $50 to $590.

29. According to reports presented at the 12th Annual DOE LLW Management Conference, the cost of mixed waste disposal is anticipated to be approximately $15,000 per cubic foot. Moreover, the need to accommodate mixed waste is expected to add a cost of several million dollars to the development of each of the LLRW disposal facilities which is currently planned. The federal government, specifically the DOE, accounts for approximately 97 to 99 percent of the mixed waste that is produced nationally. Commercial generation of mixed waste (civilian and government) accounts for a mere 1 to 3 percent. (Figures were provided by Dr. John Randall, NYS LLRW Siting Commission.)

30. Even in cases where states have entered into compacts, the economic viability of disposal facilities is questionable. This was clearly illustrated by Chem Nuclear's decision not to bid on the construction and operation of a disposal facility for the Central States Compact. Chem Nuclear believed that the projected waste stream was too small to allow the operation to

be economically viable (C. Bullard & H. Weger, LLRW disposal: Economies of scale and half-life segregation, Proceedings from Waste Management 1990, Tuscon, Arizona). In 1987, the Central States Compact shipped 152,224 cubic feet of LLRW for disposal (Tyron-Hopko & Ozaki, December 1988).

31. According to C.W. Bullard & H.T. Weger (LLRW disposal: Economies of scale and half-life segregation, Proceedings from Waste Management 1990, Tuscon, Arizona), a report by the Electric Power Research Institute demonstrates that, if only four (4) new disposal sites were developed in the nation, a $2.8 billion savings in operational and capital costs could be achieved.

ON-SITE STORAGE

32. The need for long-term on-site storage is apparent if one examines the status of siting activities in virtually all of the states and compacts. For example, Texas is involved in litigation which is expected to delay the process by at least two years. According to Chem Nuclear officials, the development of the North Carolina facility, to be used by the Southeast Compact, is experiencing a 21 month delay. The siting process in Nebraska, host state of the Central Interstate Compact, has experienced fierce public opposition. In Illinois the entire process is being independently reviewed. In New York State, recently enacted legislation has drastically altered the nature of the siting process and is expected to require more time for method and site selection and review of work done to date. With regard to the issue of mixed waste disposal, none of the states or compacts has made significant progress, and at this point it seems unlikely that any state or compact will be capable of disposing of all its LLRW by the January 1, 1996 deadline.

33. For the majority of states, including New York, interim management provisions involve on-site storage at the point of generation, and, in most instances, effective LLRW management in states and compacts will *require* longer term on-site storage than was originally anticipated. For most of the power plants, five (5) year storage capacity already exists. This capacity could be increased by the utilities' applying to the NRC for a license amendment.

34. The majority of medical and academic wastes contains short-lived isotopes in low concentrations. This portion of the low-level waste stream can be (and often is) stored on-site for decay. The material, after going through a sufficient number of half-lives, can then be disposed in a regular landfill. No comprehensive data set currently exists which objectively evaluates the ability of LLRW generators to store waste on-site for decay.

35. In late May 1990, the NRC, without the benefit of public input, issued a policy statement which indicates that, as of 1996, the NRC will not "look favorably" on point-of-generation storage at reactor sites. See Exhibit A (attached hereto). The memo contains no discussion of the technical justification for this policy, nor does it define any pertinent health or safety issues which may have affected its decision making.

36. The LLRW Policy Act of 1980 (LLRWPA) and the LLRW Policy Amendments Act of 1985 (LLRWPAA) severely limit the scope of waste management options available to the states. For example, no comprehensive study of point of generation storage or disposal (including an evaluation of regulatory, technical, and economic concerns) has ever been implemented. Thus, the existing generator storage capacity and the ability of generators to expand storage capacity is unknown.

37. The economics associated with on-site storage/disposal versus centralized disposal has not been investigated. In evaluating the costs associated with on-site management, the economic situation would undoubtedly differ depending on the generator classification. For example, management requirements for medical and academic waste, virtually all of which is Class A, are far less stringent than those necessary for Class B and C utility waste. These differences would be reflected in costs incurred for facility development.

38. As already indicated, the majority of New York State's nuclear power plants have existing on-site storage capacity for a five (5) year period, and, from a regulatory perspective, extension of storage capacity beyond that limit would require an amendment to the reactor's operating license. The ability of the utilities to extend on-site capacity beyond the five (5) year limit requires objective investigation from the technical perspective.

39. Currently, HLRW, which is much higher in radioactivity than LLRW, is being stored at the reactor sites in pools or in monitored retrievable storage facilities. Given the absence of progress in developing a federal HLRW repository, it is likely that HLRW will remain on-site at the reactors for the next several decades. In fact, the NRC recently published a revision to its 1984 Waste Confidence Decision in which it evaluated the issue of safe storage or disposal of commercially generated radioactive waste. The NRC found that "spent fuel generated in any reactor can be stored safely and without significant environmental impact for at least thirty years beyond the licensed life (of the power plant) at the reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations." (1990 Annual Report Section of Public Utility Law, American Bar Association, p.93) The curie content of utility generated LLRW is negligible when compared with that of HLRW.

40. On-site storage, particularly for utility waste is a management alternative which deserves serious consideration in light of the questionable economics and technical aspects of the LLRW policy that is being forced upon the nation by the LLRWPA and LLRWPAA. There appear to be no significant technical limitations to extended on-site storage of LLRW at reactor sites.

41. At the 12th Annual DOE LLW Management Conference which I attended in Chicago on August, 28 and 29, 1990, Mr. Terry Lash, formerly with the Illinois Department of Nuclear Safety, stated that all types of low-level waste can be stored safely at nuclear power plants if sufficient funds are allocated. The question, he stated, is not if it can be done but rather whether we want to go in that direction.

42. At the abovementioned DOE conference, Hans Tammemagi of Acres International reported that Ontario Hydro, Canada's largest nuclear utility, has been storing all of its LLRW on-site for the past 17 years, and on-site storage of LLRW is planned for a total of 50 years. Mr. Tammemagi stated that there have been no technical problems resulting from the almost 2 decades of on-site storage at the reactor complex, nor are any difficulties anticipated. Moreover, Mr. Tammemagi stated that on-site storage will need to be an integral part of any realistic LLRW management plan in the United States. He further recommended that the NRC recognize this need and alter its policy against long-term on-site storage at reactor sites after January 1, 1996.

SITE-SPECIFIC ENVIRONMENTAL CONSIDERATIONS

43. The 1980 LLRW Policy Act, although it encourages regional compacts, creates the climate for the proliferation of many disposal sites throughout the nation. Prior to enacting this legislation, a comprehensive review of region-specific

environmental considerations and an economic feasibility assessment were not implemented.

44. The literature supports the assertion that climate is the single most important factor in establishing technically sound LLRW disposal-sites. In a 1990 U.S. Geologic Survey (USGS) report (*Geohydrologic Aspects for Siting and Design of Low-Level Radioactive-Waste Disposal*, M.S. Badinger, USGS Circular 1034) it states:

> Climate directly affects the hydrology of a site and probably is the most important single factor that affects the suitability of a site for shallow-land burial of low-level radioactive waste. Humid and subhumid regions are not well suited for shallow isolation of low-level radioactive waste in the saturated zone; arid regions with zero to small infiltration from precipitation, great depths to the water table, and long flow paths to natural discharge areas are naturally well suited to isolation of the waste. (emphasis omitted)

Thus, the LLRWPA and LLRWPAA have their most devastating effect and inflict the most hardship on those states located in areas of high precipitation, shallow water table depth, and high yield aquifers, such as in the northeast.

45. Water infiltration was the major factor which led to the closure of the disposal sites at Maxey-Flats, Kentucky and West Valley, New York. The wet climate and high water table of New York and other northeastern states clearly complicate construction of a disposal site. It is highly unlikely that a facility in the northeast could ever maintain its integrity and, thus, be as "safe" as one built in an arid climate. The degree of safety that could be achieved by a New York State facility may not be adequate to protect public health to the best of the nation's ability.

FEDERAL AUTHORITY vs. STATE RESPONSIBILITY

46. The federal government maintains complete jurisdiction over the majority of nuclear issues, including LLRW management. The definition of LLRW, certain performance standards, waste production and storage at nuclear power plants and Part 70 facilities, and allowable exposure standards are all federally controlled. Yet, the responsibility for LLRW management was delegated to the states. The NRC is attempting to "tie the hands" of the states that are functioning within the confines of the federal LLRW legislation and trying to meet its intent.

47. The NRC continually attempts to thwart the ability of a state to protect the health and welfare of its citizens and the integrity of its environment. As indicated above, the NRC has promulgated a policy against long-term on-site storage at reactor sites, regardless of the fact that this position is technically unsupported and that this management option has worked successfully in Canada.

48. In addition, the federal government is placing undue restrictions on the states through the NRC's proposed policy concerning exemptions from regulatory control. The NRC's recently issued policy statement is the first step toward the promulgation of regulations which will allow for certain wastes which are currently classified as LLRW to be disposed of in regular landfills, incinerators, and sewers. These "below regulatory concern" or BRC wastes account for approximately 50 percent of the dry active LLRW (or 30 percent of all LLRW).

49. There is disagreement within the NRC itself as to the appropriateness of the NRC's recommendations. The EPA has indicated that the proposed policy, if adopted into regulation, may not adequately protect public health and safety. Furthermore, the NRC intends to make its BRC standard a compatibility requirement for Agreement States; that is, the NRC will require all states to adopt these standards verbatim, thereby precluding a state from establishing stricter environmental controls. The NRC presents no substantive health or safety reasons for prohibiting Agreement States from exercising control over exemption standards.

50. The DOE has actively discouraged the use of many of its already contaminated lands as LLRW disposal sites, even though the LLRWPAA in no way precludes this option.

51. Indeed, these examples, together with the NRC's policy against long-term on-site storage at reactor sites, clearly elucidate the degree to which the federal government is infringing on the ability of the states to effectively manage the waste, the damages from which they must assume full liability. The NRC and the DOE are following their traditional paths of promoting the nuclear power industry as specified in the Atomic Energy Act of 1954. These practices, particularly the NRC's prohibition on long-term on-site storage, may culminate in a public health and safety emergency in many states.

THE FEDERAL GOVERNMENT'S WASTE MANAGEMENT PRACTICES

52. The federal government responded to the challenge of developing a comprehensive national management plan for commercially generated LLRW by abdicating the responsibility of waste disposal to the states. This is ironic in light of the large number of DOF disposal sites throughout the nation which are in dire need of remediation. Past DOE nuclear operations have produced approximately 4,000 contaminated sites which require varying levels of remedial action (P. Whitfield et al., The Department of Energy environmental restoration program: Meeting the challenges, Proceedings of Waste Management 1990, Tuscon, Arizona).

53. As a specific example of the federal government's mismanagement of radioactive waste and deliberate attempts to shield itself from public scrutiny, consider the case of the Feed Materials Production Center in Fernald, Ohio. Records indicate that at this uranium reprocessing center of the federal government, the Atomic Energy Commission in 1953 stonewalled its contractor's attempt to remedy a water infiltration and overflow problem (bathtub effect) in the disposal trenches. Richard Shank, director of Ohio's environmental protection agency, estimated that 298,000 pounds of uranium waste has been released into the air from reprocessing plant operations. He estimated that 167,000 pounds of waste had been deliberately discharged into the Great Miami River over the 37 year operational period of the plant. An additional 12.7 million pounds of waste had been placed in pits, the integrity of which was uncertain.

54. The DOE has admitted that the government was aware of these practices and associated hazards all along, but it did not take action to remedy the situation. In fact, it took the federal government more than 30 years to admit that problems existed at Fernald. The gross mismanagement, which was ignored and exacerbated by government officials, is revealed in 300,000 pages of government memorandums, letters, and reports. In October 1989, a Cincinnati federal judge ordered the DOE to deliver $73 million to area residents who had filed a class-action lawsuit. ("They Lied To Us," *Time*, October 31, 1988, pgs. 60-65; "Bomb makers' secrets," *U.S. News & World Report*, October 23, 1989, pg. 22)

55. Clearly, the federal government has not met its own responsibilities in effective LLRW management. It has, in fact, continually violated sound waste management practices, and this has resulted in the contamination of vast areas of the country. Undoubtedly, in an attempt to shield its many violations from the eyes of the public, it is in the federal government's best interest to pass the responsibility for radioactive waste management on to the states.

TAKE TITLE PROVISION & POTENTIAL LIABILITY

56. In an unprecedented action, the 1985 LLRW Policy Amendments Act directs the states to take title to and assume full liability for damages resulting from LLRW produced within their respective borders in the event that in-state or in-compact management provisions are not made by January 1, 1996. No other waste generators, including those of the toxics and hazardous waste industries, are afforded this benefit. This provision creates the potential for tremendous liability on the part of the state.

57. In order to objectively evaluate the potential liability of a host area county or state with respect to radioactive waste management, it is necessary to investigate the costs associated with remediation programs which have occurred or which are in progress.

58. In the United States, there is not one example of a commercial LLRW disposal site which has completely maintained its integrity. Three of the existing disposal facilities closed within 10 to 15 years after beginning operations. The combination of operational practices, water infiltration, and seepage through two trench caps led to the closure of the West Valley, New York facility only 12 years after opening. The Maxey Flats, Kentucky site also experienced an ingress of water which led to migration of radionuclides from the burial ground. That site was closed 14 years after opening and has been designated as a "superfund" site. At Sheffield, Illinois radionuclide migration offsite has also been observed. When it was first opened, both the USGS and the State of Illinois certified it as leakproof. The site closed 11 years after open-

ing, and area residents are currently involved in remediation hearings.

59. In each instance, as is also the case at the three operating disposal sites, the disposal technology employed was shallow land burial; this is basically an adaptation of sanitary landfill practices. Although still allowable under NRC regulations, shallow land burial is prohibited by law in a number of states and compacts, including New York State. A number of disposal technologies involving engineered barriers are being considered, including concrete vaults and shallow mines. No operator in the U.S. has ever received a permit for any of these technologies.

60. According to the Kentucky Radiation Control Branch, Kentucky Division of Waste Management, since 1977 Kentucky taxpayers have spent $10 million to keep radioactivity from spreading from the Maxey Flats commercial LLRW disposal site. Maxey Flats has been designated a federal "superfund" cleanup site, and Kentucky officials believe that costs to prevent future leaks may be $40 to $60 million.

61. In Illinois, two years after closing, the Sheffield, Illinois LLRW disposal site was found to be leaking tritium. U.S. Ecology (then, Nuclear Engineering, Inc.) had abandoned the site in 1978. In 1978 the Illinois Department of Nuclear Safety (IDNS) sued U.S. Ecology for $98 million; the $98 represented IDNS's cost approximation in 1978 dollars for exhuming the entire LLRW site and shipping it to Richland, Washington. After 10 years of litigation, IDNS and U.S. Ecology settled out of court, and U.S. Ecology's cleanup costs are expected to range from $7 to $9 million. (Information was obtained through a conversation with a representative of IDNS.)

62. At the West Valley, New York LLRW disposal site, Nuclear Fuel Services, the operator, left void spaces in the trenches, which allowed for collapse of the trench caps and the ingress of water. Since the water could not drain through the impermeable soils, the trenches overflowed, washing radionuclides into nearby streams. The site closed in 1975, only 12 years after beginning operations. ("Low-Level Radioactive Waste Disposal: How Are States Settting Their Sites?", Irvin White & John Spath, *Environment,* Vol. 26, No. 8, October 1984) Nuclear Fuel Services abandoned the site. According to the New York State Energy Research & Development Authority, New York has spent $525,000 for pumping and maintenance of trenches. A site study is anticipated to be $1 million, and full cleanup costs have not yet been determined.

63. In the 1991 budget, an increase of more than half a billion dollars over the 1990 budget was requested for DOE. This requested increase was due primarily for the purpose of remediating the 4,000 contaminated waste disposal sites of the DOE (H.A. Kurstedt, Jr., Programmatic issues affecting the implementation of the DOE five year plan, Proceedings from Waste Management 1990, Tuscon, Arizona). According to newspaper reports, the GAO has reported to Congress that the total cost of the federal cleanup will exceed $150 billion.

64. A recently released Waste Tech News report states that cleanup costs at the Hanford reprocessing facility are estimated to run as high as $50 million. DOE's cleanup plans must address approximately 5 billion cubic yards of waste material, 1000 inactive waste sites that have been consolidated into four proposed superfund sites, 55 hazardous waste treatment and storage sites, and about 200 square miles of contaminated groundwater. Cleanup plans include the immobilization of 2.5 million gallons of mixed LLRW.

COSTS TO NEW YORK STATE & CORTLAND COUNTY

65. According to Angelo Orazio, Chairman of the New York State LLRW Siting Commission, as of August 1989 the Siting Commission had expended $11 million to perform its preliminary activities of candidate area selection. For the 1990-1991 fiscal year, the Siting Commission requested $19.6 million. Part of these funds was for the initiation of site characterization activities. Jay Dunkleberger, Executive Director of the Siting Commission, estimates characterization activities will cost $3 to $12 million per site, and the Siting Commission expects that two or three sites will undergo detailed characterization. The New York State Department of Environmental Conservation has estimated the cost of facility development and maintenance at $100 million (personal communication).

66. In December 1988, the NYS LLRW Siting Commission designated six townships in Cortland County as a "candidate area" for an LLRW disposal site. In September 1989, the Siting Commission selected two specific sites in the Cortland County Town of Taylor.

67. As a result of having been designated as a potential host community for an LLRW disposal facility, Cortland County has suffered significant financial harm.

68. Based on my conversations with numerous real estate agents in Cortland County, real estate sales in the sited Town of Taylor and in towns within close proximity to the sites have come to a virtual standstill. I have read newspaper reports which have stated that land values in the affected area have dropped by 30 to 50 percent. In instances where real estate transactions were in progress, upon discovering that the

county has two potential waste disposal sites, buyers have attempted to stop transactions.

69. I have received telephone calls from various residents within the affected areas who have stated that they were denied home equity loans because of the precarious position in which being designated as a potential host community has placed the county.

70. As a result of being designated as a potential site for an LLRW disposal facility, Cortland County has been forced to spend significant financial resources. Since February 1989 the county has expended approximately $310,000 on special legal, technical, and political consultants. Projected costs for continuing our involvement are estimated at $300,000 per year. This projected appropriation far exceeds Cortland County's 1990 budget allocations for a variety of programs, which include Juvenile Delinquent Care, Youth at Risk, Aid to Dependent Children, Alcohol Service Mental Health, Stop DWI, and the entire Planning Department budget. Costs are likely to be increased as the county's activities in litigation and special technical studies are heightened.

SOCIAL & POLITICAL UNREST

71. On November 15, 1989, the NYS LLRW Siting Commission came to Cortland County for a public hearing. Approximately 4,000 to 5,000 residents, or 10% of the county's entire population, attended the hearing to voice their opposition. Attendees were required to go through a metal detector and 50 extra security officers had been brought in from 20 different State University of New York campuses to support the Cortland College squad.

72. Protesters from Cortland County have followed Governor Mario Cuomo around the country. Since the designation of potential sites in Taylor, Cortland County citizens' groups have protested the Governor in New York City, Rochester, Albany, Syracuse, Liverpool, Cortland, and Springfield, Massachusetts.

73. On November 2, 1989, Taylor officials threatened to close roads to block access to the Siting Commission and its staff. *See* Exhibit B (attached hereto).

74. A landowner in Cortland County who volunteered property to the Siting Commission has received threats and has requested police protection.

75. On December 13, 1989, protesters in Cortland County attempted to block the Siting Commission from access to the Taylor Central site. State officials were able to get on the sites, but, due to actions of the protesters, the officials' "walkover" had to be abandoned. Upon the state officials' attempt to move to another section of the site, opponents of the disposal site trapped state workers in their cars for about two and one-half hours. The county sheriff's department eventually escorted state workers from the site on foot. Seventeen of the sheriff's department's 25 patrol officers were present on this day to contend with the protests. Twenty protesters were arrested for disorderly conduct. *See* Exhibit C (attached hereto). The sheriff's department's protection of the Siting Commission has caused a great rift in the community.

76. In mid January 1990, Cortland County District Attorney Richard Shay sent a letter to Governor Cuomo in which he stated his intention to take "immediate steps to terminate all charges pending against those individuals arrested in Taylor on December 13, 1989." In a letter of response, John J. Poklemba, Director of Criminal Justice for New York State,

indicated that, in the opinion of the Special Review Committee, Mr. Shay had not carried out the responsibilities of his office.

77. On January 19, 1990, the Siting Commission again attempted to gain access to the sited areas in Cortland County. Protesters had established road blocks on all roads leading to the sites. The car of the approaching state workers was blocked in by a number of protesters, and state workers were kept from getting within five miles of either site. *See* Exhibit D (attached hereto).

78. In March 1990 the Siting Commission established a local information office in the Cortland County Town of Cincinnatus (which is a town adjacent to Taylor). Opponents resented and vehemently protested the presence of the Siting Commission and its staff in the community. On March 1, 1990, six protesters were arrested for blocking state officials' access to the office. On March 3, 1990, three more protesters were arrested. On March 8, 1990, six protesters were arrested. On March 15, 1990, the state hired a guard for the information office. On a number of occasions, animal carcasses were piled in the doorway of the office, making it nearly impossible for state workers to keep the office open. On April 12, 1990, the sheriff requested a weeklong "cooling off" period, and the office remained closed. In late April, after numerous requests from Cortland County government officials, citizens, and area state representatives, Governor Mario Cuomo directed the Siting Commission to close the office to avoid further conflict.

I, Cindy M. Monaco, do hereby swear that the facts stated in this Affidavit are true and correct to the best of my knowledge, information, and belief.

(Sworn to by Cindy M. Monaco, September 5, 1990.)

Exhibit A—Letter.

AGREEMENT AND NON-AGREEMENT STATES
COMPACT DISTRIBUTION

STORAGE OF LOW-LEVEL RADIOACTIVE WASTE (SP-90-80)

In a letter dated February 16, 1990 (SP-90-27) we transmitted to you a copy of a Nuclear Regulatory Commission (NRC) Information Notice No. 90-09, "Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees." This notice provided guidance to licensees planning to submit license amendment request for extended interim storage of waste. The notice stated that storage is not a substitute for disposal, and that waste should be stored only when disposal capacity is not available and for no longer than necessary. Also, the notice stated that license amendment requests should include final disposal plans which specify when and where waste will be shipped for disposal, and that storage authorizations will not normally be granted for more than five years. This notice is consistent with discouraging long-term storage beyond January 1, 1996.

Since this information notice was sent to you, the Commission in a memorandum dated February 14, 1990 informed the NRC staff that, ". . . the Commission will not look favorably upon long-term onsite storage of low-level waste beyond January 1, 1996." That date is the final deadline for development of low-level radioactive waste (LLW) disposal capacity. States, either acting alone or as part of a Regional Compact, which are unable to provide LLW disposal by that date must take title to, and possession of LLW generated in their States, as well as be liable for any direct or indirect damages for failing to do so promptly.

The purpose of this letter is to encourage Agreement States to adopt a similar view regarding storage of LLW beyond January 1, 1996, and to inform their licensees, as appropriate, of their policy on extended storage of LLW.

If you have a different view on extended LLW storage, we would be interested in your position. A written expression of your position on this matter would be appreciated. If you have any questions, please contact Ms. Cardelia Maupin at 301-492-0312.

VANDY L. MILLER,
Assistant Director for State Agreements Program
State Programs
Office of governmental and Public Affairs

Exhibit B—Newspaper Article.

11/2/89

TAYLOR OFFICIALS COULD CLOSE ROADS

By CONSTANCE M. NOGAS

The Town of Taylor may have the power to legally close its roads and refuse to allow state Low-level Radioactive Waste Siting Commission workers to perform pre-characterization on two finalist sites for a radioactive waste dump in Taylor.

Pre-characterization is a series of tests such as drilling wells that will be done on five finalist sites for a dump, including the other three sites which are in Allegany County. The tests will determine which two sites should be selected for further studies.

Taylor Supervisor Robert Pudney has raised questions about whether the town could declare a state of emergency or somehow close the roads to the testers and their equipment. Pudney believes that the situation is developing into a confrontation between the people of state and Gov. Mario Cuomo. He wonders what would happen if the whole town board decided to resign and if Cuomo would then have to appoint a new town board.

Pudney told The *Cortland Standard* Tuesday that these were simply ideas he had, and he referred the legal questions to Thomas Meldrim, Taylor town attorney. Meldrim declined to comment on the issue.

Pudney's ideas turned out to be correct. If the entire town board resigned, Gov. Mario Cuomo would make interim appointments and then a special election would have to be held, Harry Willis, a senior attorney and local government counsel for the Department of State in Albany, said.

Article V Section 104 of Highway Law states that the county highway superintendent has the power to close a state highway in an emergency. There is nothing in this law that

prevents a town from closing the raid, said Pat Snyder, the attorney hired by the county to fight the dump issue.

This section of the law was amended to include a town highway superintendent closing a town road "if it shall appear necessary." It may be necessary in this case although this could be argued, Snyder said.

The town highway superintendent also has the right to sue the siting commission if the work was done wrong and somehow damaged the roads under Article VII, section 140 of Consolidated Law Service.

Pudney as supervisor may have the power to close the roads himself, if the town board passed a resolution asking him to do so. Section 276 of Town Law gives the town supervisor the power to do whatever the town board asks him to do, providing that it is legal.

11/2/89

YOUR OPINION PROTEST QUILT PLANNED

To the Editor:

To Cortland County quilters and potential quilters:

Anyone interested in participating in the construction of a county-wide quilt, in protest of the proposed low-level radioactive waste dump, please contact me at (607) 863-3980 for details.

The more blocks made, the stronger our statement will be. The theme of the quilt will be positive, i.e., depicting the things we love about this county or earth, your lifestyle, people, special events, geography, etc.

If anyone has any extra cotton, poly-cotton fabric they can donate, it would be greatly appreciated.

Thank you,
Mary Weber

Exhibit C—Newspaper Article.

20 DUMP OPPONENTS ARRESTED

BY TRISH PROSPERO
AND CONSTANCE M. NOGAS

Despite the arrest of 20 people for civil disobedience, yesterday's demonstration in Taylor against the state's nuclear waste dump project was peaceful, the Cortland County Sheriff's Department reported.

Siting commission representatives wanted to tour property in the town proposed for the dump when members of Citizens Against Radioactive Dumping tried to stop them.

Commission representatives wanted to establish access routes for equipment that will be used to complete the preliminary suitability study of potential dump sites sometime next month.

When the state crew reached the bottom of the hill on Jordan Road shortly after noon, they were met by a group of about 20 protesters who tried to block them from leaving the road. Deputies moved them back and some shoving occurred during which time CARD's disobedience organizer, Tom Cummins, apparently touched either one of the deputies or one of the workers who had just walked down the hill.

"I feel I was arrested because I am chairman of civil disobedience and non-violent resistance group of CARD," he told a crowd gathered on Jordan Road near the second vehicle after he went back up the hill on Jordan Road.

At about 12:25 p.m., Undersheriff Lee Price spoke to the estimated 14 people who surrounded the other car on the top of the hill and on the property of Roland Elwood. Inside that vehicle were Jay Dunkleberger, siting commission executive director; Ted Adams, Cortland County's liaison with the siting commission; and John Thomas, a former aide to state Assem-

blyman Clarence Rappleyea, who now works for Weston, the firm hired to do the tests.

More protesters, approximately 50 in all, crowded around. Price told them they would be charged with disorderly conduct if they didn't move.

"We want these people to know that we don't want them here ever," Cummins said, "If anyone else would like to join me now in Taylor, you can be arrested now."

About 14 people accepted this invitation but the arrests were made peacefully with no one having to be dragged away from the car although they did sing "Jingle Bells" and "We Wish You A Merry Christmas." Everyone then walked down the hill where the siting commission representatives were safely driven away to an undisclosed location outside the county. When those arrested arrived at the bottom of the hill to receive an appearance ticket in a sheriff's van, they were greeted with cheers.

Exhibit D—Newspaper Article.

N—DUMP OPPONENTS CLAIM TRIUMPH

BY CONNIE NOGAS

TAYLOR—"The people's will shone strongly today," said Jean Weiss of Marathon, one of about 200 dump opponents from Cortland and surrounding counties who twice turned back a state team that came to here yesterday to examine access routes to one of Taylor's two finalist radioactive waste dump sites.

Anti-dump opponents who manned at least four highway checkpoints claimed victory after the three-man state team retreated without reaching its objective, but one member of the state team vowed they'd be back.

No protesters were arrested during the two separate blockades at two different intersections on Taylor Valley Road: the Cheningo-Solon Pond Road intersection and the Hawley Woods Road intersection.

The state team never reached its goal of inspecting the Taylor North Site on nearby Allen Hill Road to determine access for drilling rigs and to decide where soil and other tests would be conducted beginning in February. The first roadblock stopped them about six miles away, the second about five miles away.

Most of the 730-acre site is owned by dairy farmer Arthur Allen who offered his land to the state for use as a dump. Allen wasn't available for comment late yesterday afternoon because he was reportedly milking his cows but he did speak to CARD members in the afternoon, said his wife, Sondra. She declined further comment on what was said.

About 15 anti-dump opponents, whose numbers later swelled to about 30, prevented a car carrying three siting commission representatives from entering the Cheningo-Solon Pond Road entrance for nearly an hour beginning at 9:15 a.m.

Inside the car were Ted Adams, the liaison between the New York State Low-level Radioactive Waste Siting Commission and Cortland County; Steve Choiniere of Dunn Geoscience of Albany, and Ben Tencer of Roy F. Weston Inc., the siting commission's main contractor.

At approximately noon, the trio again tried to reach the Allen farm by a different route but were met by about 30 slogan-shouting protesters near the intersection of Hawley Woods and Taylor Valley roads. Four Cortland County Sheriff Department officers were already at the scene and did not escort the car through the roadblock. More protesters and five more officers arrived later.

Dump opponents stopped the car by linking arms halfway around it in a semicircle while three protesters sat down in the road directly in front of the car. Eventually, over 100 people were milling around the car while other people stayed back to man other checkpoints.

"I felt that was my place," said Todd Rogers of Syracuse, a member of the environmental group Earth First, who sat down in front of the state men's car along with Citizens Against Radioactive Dumping members Gene Schepker of Cortland and David Pandori of Truxton. "That's what we're here for. We're here for the planet."

Ironically, yesterday was Rogers' birthday. What did he want for a present? "No dump!" he said.

Young and old were present from Taylor and other areas of the county as well as Broome, Onondaga, and Chenango Counties. Even a local political official linked arms with other protesters.

"I'll stand with the people," said Gerry Duffy of Cortland, the Republican chairman for the city. He said his involvement showed that the Republican Party really cares and is concerned about it the dump issue.

Protesters, many representing anti-dump groups other than CARD, occasionally shouted their opposition to the dump

coming to Taylor. And one protester, reportedly from Linklaen, rode his horse to the scene.

Meanwhile, the three state men spent the almost two-hour standoff inside the car by eating lunch from Wendy's and ignoring the shouts of protesters as Tencer also photographed the crowd from his vantage point in the back seat. They did speak briefly to the press, however.

"We expected the public opposition," Adams said. "Our interest is not to have anyone arrested at all. Our job is to progress forward."

Adams called the sheriff's department's handling of the day's activities, "very commendable" and promised to return but refused to specify what day.

At 12:35 p.m, four more sheriff's department officers arrived. Lt. Chauncey Bennett Jr. then told the crowd that if they didn't move, they would face charges of disorderly conduct for blocking traffic and obstructing a governmental agency because the siting commission is a state agency.

"We would like them arrested for harassment of the people and destruction of our lands," Weiss shouted back.

No one moved even after Bennett asked them to move a second time about five minutes later. Finally, protesters allowed the state men to turn their car around and leave about 1:45 p.m. Adams said the group was headed back to Cortland to assess what to do next but they never came back to Taylor again on Friday.

State officials say they have obtained the assess information they need for the Taylor Central site south of Allen's farm. Twenty dump opponents were arrested when state officials went to that site last month.

More than 30 anti-dump protesters were arrested earlier this week in Allegany County where the state has selected three other potential sites for a radioactive waste dump.

Affidavit of Clarence D. Rappleyea, Jr. in Opposition to Motion to Dismiss Complaint (dated 9/5/90).

CLARENCE D. RAPPLEYEA, JR., being duly sworn, deposes and says:

1. That I am the Assemblyman representing the 122nd Assembly District in the New York State Assembly, which district encompasses the County of Cortland, State of New York. My Assembly office is located in Room 933, Legislative Office Building, Empire State Plaza, Albany, New York 12248 and I also maintain a District Office at 17 Main Street, Cortland, New York 13045.

2. Additionally, I have been duly elected by the Republican Conference in the New York State Assembly to serve as the Minority Leader of the New York State Assembly and I have served in this position since 1983.

3. That I also am an Attorney, duly admitted to practice law in the State of New York and I conduct a law practice at Hinman, Howard and Katell, Esqs., 2 Hayes Street, Norwich, New York 13815, which office is located in the County of Chenango, State of New York.

4. That I make this affidavit in support of the instant action brought by the Plaintiffs seeking a declaratory judgment finding that the Low-Level Radioactive Waste Policy Amendments Act of 1985 is unconstitutional and, therefore, null and void.

5. As the Assemblyman representing Cortland County, one of the Plaintiffs herein, and as Minority Leader in the New York State Assembly, I submit this affidavit to offer affirmations and documents relevant to the enactment of Chapter 673 of the Laws of 1986 of the State of New York (Assembly Bill

11729/Senate Bill 9616) and, upon information and belief, to set forth my understanding of the legislative intent related to the adoption of such statute.

6. On July 3rd, 1986 the New York State Assembly and Senate during the final hours of the 1986 Legislative Session passed legislation referred to as Senate Bill 9616 (Assembly Bill 11729) regarding management of low-level radioactive waste generated in New York State. As evidenced by the Assembly roll call, a copy of which is attached hereto as Exhibit A and made a part hereof, the New York State Assembly voted 144-0 in favor of the adoption of this legislation at 1:22 p.m. on said date. Similarly, the New York State Senate also voted unanimously on July 3rd to adopt Senate Bill 9616 as indicated in the Senate roll call, a copy of which is annexed hereto as Exhibit B and made a part hereof.

7. Annexed hereto as Exhibit C is the two page transcript of the Assembly proceedings on July 3rd, 1986 for Senate bill 9616. The transcript reflects the proceedings of the New York State Assembly wherein this legislation was called for an immediate vote without any debate.

8. Upon information and belief, subsequent to passage by both Houses of the New York State Legislature, said bill was signed into law by Governor Cuomo and became Chapter 673 of the Laws of 1986 for the State of New York, a copy of which is annexed hereto as Exhibit D and made a part hereof. Your deponent respectfully refers to Section 2 of said Chapter 673 which clearly references the federal Low-Level Radioactive Waste Policy Act and the federal Low-Level Radioactive Waste Policy Amendments Act of 1985 as the impetus for New York State to take immediate steps in connection with the selection of disposal methods for the siting, construction and operation of management facilities in New York State. Said legislative findings identify the January 1st, 1993 milestone,

as established by federal statute, as the principal foundation for the passage of this legislation.

9. Your deponent respectfully asserts that in the absence of such federal mandates, the New York State Assembly would not have acted during the 1986 Legislative Session to consider and pass New York's Low-Level Radioactive Waste Management Act (Chapter 673 of the Laws of 1986 for the State of New York).

10. In furtherance of my assertion that the New York State Legislature acted in response to federal dictates, annexed hereto as Exhibit E is a copy of the bill jacket for Chapter 673 of the Laws of 1986 for the State of New York. To the best of my knowledge as a Member of the Assembly, subsequent to the passage of legislation, the Governor's office circulates such legislation for comment by appropriate state agencies and other interested third parties to solicit and compile opinions regarding the adoption or veto of bills that have passed the Legislature. An extensive bill jacket was accumulated on Senate bill 9616 and each submission in said bill jacket emphasizes the federal requirements and milestones of the Low-Level Radioactive Waste Policy Act of 1980 and the Low-Level Radioactive Waste Policy Amendments Act of 1985.

11. In support of Plaintiffs' Complaint, I further allege, upon information and belief, that the federal compulsion which led to the adoption of Chapter 673 of the Laws of 1986 in New York State has further imposed a disruptive impact on governmental processes at local and state levels. The siting process required by federal statute to be undertaken in New York State has had severe ramifications for the County of Cortland and the State of New York, in terms of both social and economic cost. Extensive public outcry, including public rallies and demonstrations, the formation of constituent groups opposing the siting process, instances of public reaction which

could be deemed civil disobedience, and all the attendant law enforcement problems and expenses related to maintaining public safety have been thrust upon the County of Cortland as it attempts to respond to its selection as a potential disposal site. Such public reaction is more fully described in the affidavit submitted on behalf of the County of Cortland but as its Assemblyman, I can attest to the prominence of this issue both for local and county officials, as well as state representatives.

12. Upon information and belief, the siting process has detrimentally affected the economic development of Cortland County in that land values have depreciated and the number of land transactions has declined. Potential businesses have questioned the feasibility of locating in the County, and the public has demanded further information regarding public health and safety in the event of the establishment of a low-level radioactive waste disposal facility within their locale. Although these concerns are more particularly addressed in the submissions from Cortland County, as a Member of the Assembly I have received approximately 3500 letters or mailings from my constituents voicing their opposition to the siting process and questioning the need for New York state to establish a disposal facility in light of the decreasing volume of low-level radioactive waste produced not only in New York State but nationwide.

13. Unquestionably the federal compulsion which caused New York to enact Chapter 673 of the Laws of 1986 has propelled Cortland County into a period of turbulent public reaction occasioning additional governmental costs, not only for law enforcement expenditures but to properly respond to the scientific and technical issues involved in the siting process. These political, social and economic burdens would not have been experienced in Cortland County but for the federal actions at issue in this proceeding.

WHEREFORE, your deponent respectfully requests that this Court deny the Defendants' motion to dismiss.

(Sworn to by Clarence D. Rappleyea, Jr., September 5, 1990.)

United States Exhibit A—(included in the Compilation of Declarations and Exhibits filed on October 26, 1990)—Declaration of Stephen N. Solomon (dated 10/25/90).

I, Stephen N. Salomon, do hereby declare that:

1. I am a Technical Analyst for the State, Local and Indian Relations Division of the Office of State Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission. My Office is located at 11555 Rockville Pike, Rockville, Maryland 20852.

2. I have worked with the U.S. Nuclear Regulatory Commission (NRC) and its predecessor agency since August 1973. Since 1980 I have been primarily involved in low-level radioactive waste (LLRW) issues facing the States. My responsibilities include formulating NRC positions with regard to compact formation and the development of the Low-Level Radioactive Waste Policy Amendments Act of 1985. Other positions that I have held at NRC include Technology Assessment Specialist in the Cost-Benefit Analysis Branch, Environmental Economist for the Nuclear Energy Center Site Survey, Federal-State Siting Action Study, and State and local funding for emergency preparedness.

3. Low-level radioactive waste in New York State is generated by utilities and by "materials licensees." The utilities, which operate seven nuclear power plants, are regulated by NRC. New York State, because it is an Agreement State, regulates approximately 1,900 material licensees, many of whom generate LLRW. They are divided into four categories—academic, government, industrial and medical. In addition, within New York there are 75 NRC materials licensees, some of which engage in activities related to the production of nuclear power.

AGREEMENT STATES PROGRAM

4. From NRC's perspective, the Agreement States Program is one attractive means of implementing the NRC's health and safety mission as it relates to radioactive materials and LLRW. The 29 Agreement States regulate approximately two-thirds of the users of radioactive materials in the United States and a large portion of the nation's LLRW activities. The program is funded and administered individually by the 29 Agreement States except for the NRC oversight function and the NRC training program for the States.

5. The Commission has recently reaffirmed its clear support for the Agreement State Program; and it believes that the programs are among the most efficient and effective means it has to protect the public health and safety in the materials area. The Commission strongly supports the continuation of funding for State Personnel to attend NRC training programs, with the Commission's resources, and with encouragement to the States to share costs where possible.

TRANSPORTATION AND ENVIRONMENTAL REGULATION OF LLRW

6. The transportation of low-level radioactive waste is recognized as an important element of low-level radioactive waste disposal by all the interested Federal agencies and by the States. Because New York is an Agreement State, it must adopt regulations that are compatable with federal regulations which establish requirements for packaging, preparation for shipment, and transportation of radioactive material and apply to any person who transports radioactive material or delivers radioactive material to a carrier for transport. The State must also adopt the regulations of the U.S. Department of Transportation for interstate and intrastate transportation.

7. In the case of New York State, under Section 14(f) of the New York Transportation Law, 17 N.Y.C.R.R. 507, the Commissioner of Transportation is empowered to promulgate rules and regulations governing the classification, description, packaging, marking, labeling, and preparation of all hazardous materials in accordance with the regulations promulgated by the U.S. Department of Transportation in 49 CFR Parts 170-189. Many types of low level radioactive waste are included in the definition of hazardous materials.

8. The NRC has a history of cooperating with the State of New York in other areas of mutual interest. For example the NRC has cooperated with New York State in the area of environmental regulation of activities involving radioactive waste, by signing a memorandum of understanding (MOU). The MOU is between the New York State Board on Electric Generation Siting and the Environment, the Departments of Environmental Conservation and Public Service, and the NRC. It sets forth mutually agreeable principles of cooperation relating to environmental matters in areas subject to concurrent jurisdiction under State of New York and Federal laws and regulations governing approvals, licensing and regulation of nuclear electric generating facilities. The intent of the MOU is that the Siting Board, the two State agencies and the NRC regularly consult and cooperate in exploring and implementing appropriate procedures designed to assure that delays in the siting of electric generation facilities and duplication of effort will be minimized and that effective use will be made of resources of the two State agencies and the NRC, particularly in the areas of professional expertise.

TECHNICAL ASSISTANCE

9. The State Programs Office provides a central point of contact at NRC for the States and low level waste compacts on regulatory issues involving the management and disposal of

LLRW. Other NRC offices, such as the Division of Low-Level Waste and Decommissioning (within the Office of Nuclear Material Safety and Safeguards), and the Division of Engineering (within the Office of Nuclear Regulatory Research), provide additional technical assistance, as required. The Regional State Liaison Officers monitor State and compact actions in developing new disposal capacity and provide information and assistance as appropriate. Assistance is also provided to Agreement States or States seeking Agreement State status on staffing capabilities, program organization, analytical methods for predicting disposal site performance, environmental monitoring, and review and comment on the license review process and any difficult licensing questions. Several other federal agencies provide training as well. *See* "Funding the NRC Training Program for States," NUREG-1311, June 1988 and "State Cost Sharing of Training," NUREG-1336, August 1989.

10. The funding provided for Agreement State training is currently budgeted at $695,000 annually. Of this amount, $390,500 is associated with travel and per diem expenses of State personnel.

11. For low-level radioactive waste, the NRC has offered, for example, the following training courses during the last year for the States: LLRW Disposal Regulatory Workshop, September 7-8, 1989; LLRW Research Program, April 24-25, 1990; LLRW Disposal Regulatory Workshop, June 19-21, 1990; LLRW Performance Assessment Workshop, September 26-28, 1990; and Nuclear Transportation, September 24-28, 1990. Members of New York's Departments of Health, Conservation, or Labor attended each of these courses.

12. One training course involved participation in NRC's mock technical review of the prototype license application safety analysis report (PLASAR) prepared by the U.S. Depart-

ment of Energy for alternatives to shallow land burial—an earth-mounded concrete bunker and below-ground vault. The objectives of the review were: (1) to provide assistance to Agreement States and regional compacts by identifying acceptable and unacceptable alternative design features and concepts; and by demonstrating how to use the Standard Review Plan NUREG-1200, Rev.1, to conduct a licensing review; (2) to provide the NRC staff and State regulatory personnel with experience in using the Standard Review Plan to conduct a review of a LLRW facility; and (3) to identify weaknesses in the Standard Review Plan and licensing process that could lead to recommendations for improvements. (The Standard Review Plan provides guidance to NRC staff reviewers who perform safety reviews of applications to construct and operate LLRW disposal facilities.)

13. The NRC recently provided technical assistance to Utah, Texas, Nebraska, Michigan and New York in establishing their LLRW regulatory programs and in meeting the requirements of the Low-Level Radioactive Waste Policy Amendments of 1985. Technical assistance was also provided to Pennsylvania, Nebraska and New York in formulating LLRW regulations compatible with NRC regulations. Assistance on specific cases was furnished to Florida, Utah, Colorado, Georgia and Nevada.

14. During 1974, New York State and New York City participated in a joint DOT/NRC radioactive material transportation surveillance program. Many other State participated in this joint program between 1977 and 1981. This joint program laid the basis for the State Hazardous Materials Enforcement Development (SHMED) Program of the U.S. Department of Transportation, which provided guidance to states on regulation and enforcement of LLRW transportation.

15. States have taken a variety of approaches in order to comply with the 1985 Act, with respect to siting, building, operating and funding. Most states or compacts have chosen to have private contractors operate the disposal sites. The State of California and has contracted with its "licensee designate", a private company, to site, design, apply for a license, construct and operate the disposal facility. The State itself will be involved only in licensing and regulating the facility.

16. States are considering a variety of disposal methods, including above- and below-ground vaults, earth-mounded concrete bunkers, below-ground canisters, and shallow land burial. New York is considering a number of alternatives, including deep vertical shaft mined disposal, and above ground monitored retrieval disposal.

17. The U.S. Department of Energy has funded transportation related studies designed to assist the States in deciding how to best regulate the transportation of low-level radioactive waste.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 25, 1990

STEPHEN N. SALOMON

United States Exhibit B—(included in the Compilation of Declaration and Exhibits filed on October 26, 1990)—Declaration of Richard L. Bangart (dated 10/25/90).

I, Richard L. Bangart, hereby declare that:

1. I am the Director of the Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission. My Division has responsibility for the performance of safety and environmental reviews of applications for licenses for low-level radioactive waste (LLW) disposal facilities. I have held previous positions within NRC as Director of the Division of Radiation Safety and Safeguards in Region IV and Section leader in the Office of Nuclear Reactor Regulation where I had inspection and licensing responsibility for assuring safe management and disposal of radioactive wastes by NRC licensees.

2. The NRC is an independent regulatory agency of the Federal Government created under the Energy Reorganization Act of 1974. NRC has responsibility to assure that civilian uses of nuclear materials are carried out with proper regard and provision for the protection of public health and safety, of the environment, and of the national security. The NRC has no developmental or promotional responsibilities for civilian uses of nuclear materials.

3. The NRC carries out its mission through the licensing and regulatory oversight of nuclear reactor operations and other activities involving possession and use of nuclear materials, through the issuance of rules and standards, and through inspection and enforcement actions.

4. NRC's licensing procedures and regulations are set out in Title 10, Code of Federal Regulations (CFR). NRC's regulations for licensing the disposal of LLW in are set out in 10 CFR Part 61. Agreement States adopt and implement regulations which are compatible to Part 61. Other non-Agreement States are subject to Part 61. Thus, all LLW disposal facilities must meet Part 61 or compatible Agreement State regulations. The purpose of Part 61 and compatible Agreement State regulations is to ensure that LLW disposal facilities licensed under the regulations will protect the public health and safety and the environment.

5. Part 61 was developed over an approximate five year period and included extensive public, State and industry input and preparation of supporting draft and final environmental impact statements. It was published as a final rule on December 27, 1982.

6. Problems in siting, operations and financial assurance were experienced at four of the six early commercial LLW disposal facilities including West Valley (licensed by New York State), Maxey Flats (licensed by Kentucky), Sheffield (licensed by Atomic Energy Commission (AEC)), and Beatty (licensed by Nevada and AEC). The requirements included in Part 61 are based on both the positive, successful operating experience as well as the lessons learned from poor operating performance of past LLW disposal sites and operations. Part 61 is directed at ensuring that past problems in LLW disposal facility siting, operations and financial assurance will not recur in the future.

7. Part 61 establishes requirements in four major areas. First, it establishes the administrative and procedural requirements which NRC will apply in licensing LLW disposal facilities. Second, it establishes overall performance or safety objectives which must be achieved in the land disposal of LLW. Third, it establishes specific technical requirements for near surface disposal in the areas of siting, disposal facility

design, facility operations, facility closure, environmental monitoring, waste form, waste classification, financial assurance, land ownership and institutional control. Fourth, it establishes requirements which licensees who generate waste must meet when shipping such waste to a disposal facility.

8. The technical requirements of Part 61 apply to the near surface disposal of LLW. Shallow land burial is one near surface disposal technique. Some States have precluded use of shallow land burial through legislation. A State may preclude use of a particular technique, such as shallow land burial, for its own reasons and use another alternative near surface disposal technique such as a below ground vault.

9. In response to the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LRWPAA), NRC developed and published guidance on licensing alternative near surface disposal techniques. In December 1986 NRC published a technical position, NUREG-1241, "Licensing of Alternative Methods of Disposal of Low-Level Radioactive Waste." In January 1988, NRC published revisions to the standard format and content guide and standard review plan for alternatives that would be constructed of cement material with earthen covers such as below-ground vaults and earth mounded concrete bunkers. Guidance for licensing other land disposal methods, such as mined cavity disposal, has not been developed and such facilities would be handled on a case by case basis.

10. The four performance or safety objectives established by Part 61 are to: protect the general population from releases of radioactivity, protect individuals from inadvertent intrusion, protect individuals during operations and ensure stability of the site after closure.

11. The siting requirements identify both desirable site characteristics as well as characteristics to avoid, and apply to the broad range of geologic, hydrologic, meteorologic, and climatic conditions that will be reflected in siting locations throughout the country. The site suitability requirements are also intended to function collectively with requirements on facility design, operations, closure, waste form and classification to assure isolation of LLW.

12. Under the LLW classification system established in Part 61, LLW is divided into three categories (Class A, B, or C) based on the radionuclides present in the waste and their radioactivity concentration. Specific concentration limits are established for each waste class.

13. The concentration limits are based on analyses of potential biological hazard and include consideration of factors such as the radiotoxicity, physical half life and biological half life of the radionuclide. Class A waste has the lowest concentration limits, Class C the highest. LLW which exceeds the concentration limits for Class C waste is generally not acceptable for near surface disposal and requires prior evaluation and approval for disposal at a near surface disposal facility.

14. The classification system is progressive in nature. As the waste class, and thus, associated hazard potential of the waste increases, the requirements in Part 61 placed on disposal of that waste class increase. Class A waste must meet minimum waste form requirements and must be disposed of in separate disposal units from those used for disposal of Class B and C waste. Class B and C waste must meet the minimum waste form requirements and additional waste form stability requirements. Class C waste must be disposed of at greater depths or with additional barriers to provide additional protection against inadvertent intrusion.

15. The classification system establishes a limit on the concentration of long-lived radionuclides present in Class C waste and a lower concentration limit for class A and B waste. Long lived radionuclides may be present in all three waste classes, but at concentration limits that are dependent on the waste class.

16. Part 61 allows the concentration of a radionuclide to be averaged over the volume of the waste or weight of the waste including the volume or weight of the solidification media used to encapsulate the waste. It is not acceptable, however, to intentionally combine different waste types of different waste class or to add unlimited volumes or weights of solidification media to intentionally dilute and lower the waste class.

17. Under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA), States are responsible for providing disposal capacity for Class A, B, and C wastes as defined in Part 61. Wastes exceeding the Class C concentration limits are a responsibility of the Federal Government. Under the LLRWPAA, States also have the prerogative to elect to accept LLW exceeding the Class C concentration limits for disposal.

18. Currently, the majority of LLW falls into the Class A category (approximately 96% of the total volume is Class A waste. Approximately 3% is Class B and 1% Class C.) Class C waste accounts for approximately 54% of the total activity, Class B 36% and Class A 10%. These numbers vary from year to year, and among generators, based on factors like advances in technology.

19. The LLRWPAA establishes a series of milestones, incentives and penalties for the development of new disposal capacity by States. While such disposal capacity is being developed, NRC recognizes that licensees currently have and

will continue to have need to store LLW for an interim period of time either prior to shipment for disposal at existing disposal facilities or while such new disposal capacity is developed.

20. NRC views storage of LLW as a short term interim step between generation of waste and ultimate disposal, not as a substitute for the development of new disposal capacity. In the interests of protecting the public health and safety and maintaining occupational exposures as low as reasonably achievable, the length of time LLW is placed in storage should be minimized. Guidance on storage of LLW at reactors and materials licensees is set out in two Generic Letters for reactors (Generic Letters 81-38 and 85-14) and Information Notice 90-09 for materials licensees. NRC has also issued Information Notice 89-13 to provide information to licensees on actions they should consider in the event they are denied access to the currently operating disposal facilities. Generic Letter 81-38 is attached as Exhibit *P*.

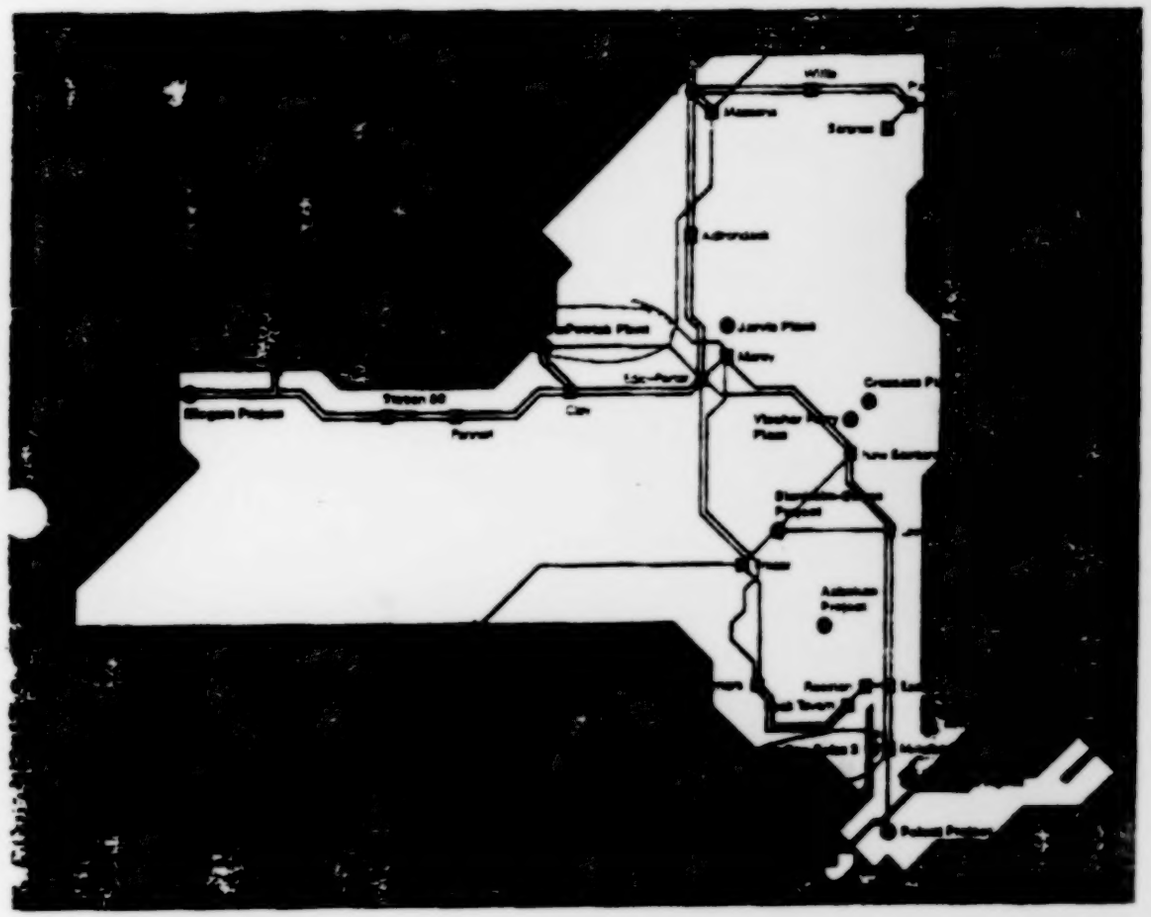
Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 25, 1990

RICHARD L. BANGART

United States Exhibit E—New York Power Authority Annual Report for 1989 (Exhibit only includes the cover and pages 25-27 of the report.).

Source: NY Power Authority Annual Report for 1989



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(25) POWER AUTHORITY FACILITIES

St. Lawrence-Franklin D. Roosevelt Power Project

Location: Massena, on the St. Lawrence River

Net Dependable Capability: 800,000 kw

First Commercial Power: July 1958

1989 Net Generation 6.5 billion kwh

Net Generation Through 1989 210.5 billion kwh

Principal Features:

Robert Moses-Robert H. Saunders Power Dam: runs from Barnhart Island in the United States to Cornwall, Ontario. Thirty-two generators-16 on each side of the international boundary. Length, 3,200 feet; height, 167 feet; width, 184 feet. Hydraulic head: 81 feet.

Long Sault Dam: extends 2,960 feet from the New York mainland to Barnart Island.

Iroquois Dam: located 25 miles upstream from Long Sault Dam near Iroquois Point in Canada. Controls outflow from Lake Ontario. Length, 1,980 feet; height, 67 feet; width, 80 feet.

Niagara Power Project

Location: Lewiston, on the Niagara River

Net Dependable Capability: 2,400,00 kw

First Commercial Power: January 1961

1989 Net Generation: 14.2 billion kwh

Net Generation Through 1989: 425.9 billion kwh

Principal Features:
Two water intakes on the Niagara River, located two and a half miles upstream from the Falls.

Two underground conduits, each 46 feet by 66 feet, carry water four and a half miles under the City of Niagara Falls to a forebay connecting the Robert Moses and Lewiston plants.

Robert Moses Niagara Power Plant: 13 turbine-generators. Length, 1,840 feet; height, 389 feet; width, 580 feet. Hydraulic head: 305 feet.

Lewiston Pump-Generating Plant: 12 pump-generators, each rated at 20,000 kw; 1,900-acre storage reservoir.

Blenheim-Gilboar Pumped Storage Power Plant

Location: Blenheim and Gilboa in Schoharie County, about 40 miles southwest of Albany.

Net Dependable Capability: 1,040,000 kw

First Commercial Power: July 1973

1989 Gross Generations: 1.4 billion kwh

Gross Generation Through 1989: 24.7 billion kwh

Principal Features:
Lower reservoir: 420 acres on Schoharie Creek. Upper reservoir: 390 acres on Brown Mountain. Connecting tunnel system: vertical shaft and horizontal tunnel branching into four penstock tunnels. Powerhouse: four reversible pump-generators.

James A. FitzPatrick Nuclear Power Plant

Location: Scriba, on the south shore of Lake Ontario, Oswego County

Net Dependable Capability: 800,000 kw

First Commercial Power: July 1975

1989 Net Generation: 6.2 billion kwh

Net Generation Through 1989: 65.8 billion kwh

Principal Features:
Boiling water reactor weights 503 tons and uses 115 tons of uranium fuel. Reactor operates at a temperature of 545 degrees F. to produce 10.4 million pounds of steam an hour.

Turbine-generator uses steam from the reactor to rotate 1,800 times a minute to generate electricity at 24,000 volts.

Water from Lake Ontario is used to condense steam from the reactor back to water for reuse in the reactor. None of the lake water goes through the reactor. It is returned to the lake through an underwater fountain that limits the lake's surface temperature increase to less than three degrees F. above the existing temperature near the discharge point.

(26) ***Indian Point 3 Nuclear Power Plant***

Location: Buchanan, on the Hudson River, Westchester County

Net Dependable Capability: 965,000 kw

First Commercial Power: August 1976

1989 Net Generation: 5 billion kwh

Net Generation Through 1989: 59.3 billion kwh

Principal Features:
Pressurized water reactor weights 433 tons and holds 111 tons of uranium fuel. Reactor operates at a temperature of 547 degrees F. and pressure of 2,235 pounds a square inch. Steam generators transfer the heat to a separate system.

Turbine-generator uses steam from that system to rotate 1,800 times a minute to produce electricity at 22,000 volts.

Water from the Hudson River is used to condense steam back to water for reuse in the nonnuclear portions of the steam generators. The river water is returned to the Hudson in a manner that limits the river's surface temperature increase to four degrees F. above the existing temperature.

Charles Poletti Power Project

Location: New York City, on the East River

Net Dependable Capability: 825,000 kw

First Commercial Power March 1977

1989 Net Generation: 2.6 billion kwh

Net Generation Through 1989: 30.6 billion kwh

Principal Features:
Balanced-draft boiler, 175 feet high, modified to burn natural gas as well as oil. Boiler produces 6.6 million pounds of steam an hour to rotate the turbine-generator 3,600 times a minute. Oil-storage tank farm with 36-million-gallon capacity.

Ashokan Project

Location: Ashokan Reservoir, in Olive, Ulster County

Net Dependable Capability: 3,300 kw

First Commercial Power November 1982

1989 Net Generation: 20.4 million kwh

Net Generation Through 1989: 147.1 million kwh

Principal Features:
Underground powerhouse with two turbine-generators. A 240-foot-long penstock from the reservoir. Remote operations under jurisdiction of Blenheim-Gilboa project.

Kensico Project

Location: Kensico Reservoir, in Valhalla, Westchester County

Net Dependable Capability: 2,400 kw

First commercial Power: July 1983

1989 Net Generation: 18.7 million kwh

Net Generation Through 1989: 103 million kwh

Principal features:
Three turbine-generators installed below ground in the reservoir's lower effluent chamber. Remote operations under jurisdiction of Poletti project.

(27) NOTES TO FINANCIAL STATEMENTS

Note A—General

The Power Authority of the State of New York is a corporate municipal instrumentality and political subdivision of the State of New York created by the Legislature of the State by Chapter 772 of the Laws of 1931, as last amended by Chapter 469 of the laws of 1989.

Properties and income of the Authority are exempt from taxation. However, the Authority is authorized by Chapter 908 of the Laws of 1972 to enter into agreements to make payments in lieu of taxes with respect to property acquired for any project where such payments are based solely on the value of the real property without regard to any improvement thereon by the Authority and where no bonds to pay any costs of such project were issued prior to January 1, 1972.

Note B—Accounting Policies

(1) Accounts of the Authority are maintained in accordance with the Uniform system of Accounts prescribed by the Federal Energy Regulatory Commission (FERC).

(2) Utility plant is stated at original cost and consists primarily of amounts expended for labor, materials, services and indirect costs to license, construct, acquire, complete and place in operation the projects of the Authority. Interest on amounts borrowed to finance construction of the Authority's projects is charged to the respective project prior to completion thereof. Borrowed funds and internally generated funds restricted for a specific construction project are deposited in construction funds. Earnings on such fund investments must remain in the fund and may only be used for construction purposes. Earnings on unexpended borrowed funds are credited to the cost of the related project until completion of the project. Interest earned on internally generated funds is deferred and will ultimately reduce the cost of the related project. During 1989, $16,195,000 of interest income on internally generated construction funds was deferred. In periods prior to 1989, such deferred interest income reduced construction work in progress, but as of December 31, 1989, it is reported as a deferred credit on the Balance Sheet. Utility plant is reduced by revenues received for power produced (net of expenditures incurred in operating the projects) prior to the date of completion. The costs of current repairs are charged to operating expenses and renewals and betterments are capitalized. The

cost of utility plant retired and the cost of removal less salvage (exclusive of nuclear plant decommissioning costs) are charged to accumulated depreciation.

(3) Depreciation is provided on a straight-line basis over the estimated useful lives of the various classes of plant as determined by independent engineers and includes estimated cost of removal, net of estimated salvage value. The depreciation provision for 1989 expressed as a percent of average depreciable electric plant approximated 2.7% on an annual basis.

(4) the amortization of nuclear fuel is provided on a unit of production basis. Amortization rates are determined and periodically revised to amortize the cost of nuclear fuel over its estimated useful life. The costs of disposal of spent nuclear fuel will be met from provisions included in operating expenses (See Note F). In addition, the Authority is providing for the decommissioning of its nuclear plants over their estimated useful lives (See Note G (5)).

5) Deferred revenues represent certain billings, related to the recovery of costs, which have been deferred and will be amortized over the life of the applicable asset.

(6) Costs incurred by the Projects' Study Fund for preliminary investigations of a project are transferred to utility plant upon the specification of a project under the General Purpose Bond Resolution (See Note D). If the study does not result in a project, the costs are charged as an expense to net revenues in the period such determination is made.

(7) Unamortized debt discount and expense are amortized over the lives of the related debt issues on a straight-line basis.

(8) In accordance with the Resolution, upon completion, or the latest estimated date of completion, of each project, whichever is earlier, all revenues received from such project are required to be paid into the Revenue Fund.

(9) Funds required for all bond service payments due under the Resolution are payable on July 1 and January 1 and are made available to the Bond Trustee on the immediately pre-

ceding June 30 and December 31, by which dates such amounts are segregated for that purpose. Accordingly, at December 31, 1989 no liability is reflected in the accompanying financial statements for January 1, 1990 bond service payments of $167,599,000.

(10) Investment of the Authority's funds is administered in accordance with the applicable provisions of the General Purpose Bond Resolution and with the Authority's investment guidelines adopted pursuant to Section 2925 of the Public Authorities Law. These guidelines comply with the New York State Comptroller's investment guidelines for public authorities. The Authority's investments have been restricted to obligations of the U.S. Government, its agencies and instrumentalities, and to agreements for the repurchase of such obligations and to direct and general obligations of any state or political subdivision, provided that such obligations were rated in either of the two highest rating categories by two nationally recognized bond rating agencies. All investments are held by the Authority's designated custodian in the name of the Authority. Securities that are the subject of repurchase agreements must have a market value at least equal to the cost of the investment, and the agreements are limited to a maximum fixed term of five business days. At December 31, 1989 the Authority had investments in repurchase agreements of $48,160,000 and the aggregate cost of all investments in U.S. Government securities approximated market value based upon published bid prices. At December 31, 1989 the Balance Sheet reflects cash in the Restricted Funds, Construction Funds and in Current Assets of $1,361,000. The available bank balances were $12,918,000, of which $549,000 was covered by Federal depository insurance, $6,7000,000 was collateralized and $5,669,000 was uninsured. The uninsured balance

United States Exhibit J—(included in the Compilation of Declarations and Exhibits filed on October 26, 1990)—Low-Level Waste: A Program for Action, Final Report of the National Governor's Association Task Force on Low-Level Radioactive Waste Disposal (November, 1980) (excerpts).

LOW-LEVEL WASTE:
A PROGRAM FOR ACTION

Final Report
of the
National Governors' Association
Task Force on Low-Level Radioactive Waste Disposal

November 1980

Energy and Natural Resources Program
National Governors' Association
444 North Capitol Street, Washington, D.C.

This report was prepared by members of the National Governors' Association Task Force on Low-Level Radioactive Waste Disposal and by the staff of the NGA Energy and Natural Resources Program.

Task Force Chairman: Governor Bruce Babbitt of Arizona.

Other task force members:

Governor Bill Clinton of Arkansas (Chairman, NGA Subcommittee on the Environment);
Governor John V. Evans of Idaho and Governor Richard L. Thornburgh of Pennsylvania (Co-chairmen, NGA Subcommittee on Nuclear Power);

Governor James R. Thompson of Illinois (Chairman, NGA Committee on Transportation, Commerce and Technology);
Governor Robert List of Nevada and Governor Dixy Lee Ray of Washington (Co-chairman, NGA Subcommittee on Transportation of Hazardous Materials); and
Governor Richard W. Riley (Chairman, State Planning Council on Radioactive Waste Management).

Price: $3.00

November 1980

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Appendix II. Incentives for the Construction of Low-Level Nuclear Waste Facilities . . . . .

Appendix III. A Model Bill Granting the Consent of Congress to Interstate Compacts for the Establishment of Regional Low-Level Waste Disposal Facilities . . . . .

OVERVIEW

The National Governors' Association has in recent years actively promoted the concept of "cooperative federalism." The objective is to provide a more equitable division between federal and state roles in areas where states have the capacity and desire to assume responsibility. Low-level nuclear waste management is a field where the states and the federal government have shared responsibility since the inception of the Agreement States program in 1959. Though questions have arisen about some aspects of the program, over two decades of experience have demonstrated that states can and do possess the technical and administrative capacity to manage low-level nuclear waste disposal.

Last year's temporary closure of two of the nation's three commercial waste disposal sites dramatically highlighted the need to establish additional disposal facilities immediately. Those closures were precipitated by the consistent failure of waste generators to properly package and transport their waste and the subsequent failure of several state and federal agencies to adequately enforce waste packaging and transportation regulations and impose proper sanctions. The crisis created by the site closures also raised questions about the appropriate state and federal roles in securing additional capacity as soon as practicable. The prospect of a federally-imposed solution is one option. The Task Force, however, after assessing the problems and proposed alternatives, has concluded that a solution developed by the states is preferable and possible. A state solution recognizes that, in the final analysis, although certain federal involvement is required, the siting of a low-level nuclear waste facility involves primarily state and local issues which are best resolved at the governmental level closest to those affected.

Unlike many problems confronting the nation, the issue of low-level waste does not, in the view of the Task Force, present insurmountable technical or political obstacles. We do not underestimate the challenge involved in siting additional low-level waste facilities, but it has been demonstrated that safe, long-term disposal technology does presently exist and that through proper incentives and public education, increased adequate disposal capacity can be developed. The Task Force is encouraged that the findings of other groups studying the problem are in accord with those of the Task Force.

The relative unanimity of opinion among groups such as the NGA Task Force, the State Planning Council and the U.S. Department of Energy's Low-Level Waste Strategy Task Force, indicates that implementation of a regional strategy leading to the creation of regional sites is the major task remaining to resolve the low-level waste problem.

THE ISSUE

In July of 1979, the Governors of Nevada, South Carolina, and Washington, the states hosting the nation's only operating commercial low-level waste disposal sites, became concerned about the threat to public health and welfare posed by improper packaging and unsafe vehicles. They demanded that the Nuclear Regulatory Commission and the Department of Transportation enforce waste packaging and transportation regulations. Despite assurances from these agencies, the State of Washington found further violations of the regulations. Governor Ray closed the Hanford facility on October 4. On October 23, Governor List closed the Beatty, Nevada site after a U.S. Geological Survey team uncovered waste buried outside the existing fence—demonstrating inadequate record-keeping for past operations at the site.

The sites were eventually reopened, following promises of certain corrective actions, but the three Governors of the repository states clearly and forcefully wanted their unwillingness to continue to shoulder the entire national burden for low-level waste. They emphasized the necessity for other states to share in that responsibility. In addition, the citizens of repository states have for years borne the health and monetary costs of defective packaging and faulty vehicles. Moreover, some low-level waste is shipped from New England to Hanford, Washington causing excessive transportation costs and threatening unnecessary exposure to residents along the shipping route. The Governors' pronouncement, coupled with the diminishing physical capacity of those sites, compels immediate action.

Low-level wastes are defined as all radioactive wastes except spent fuel, high-level wastes which result from reprocessing of spent fuel, uranium mill tailings or wastes which contain more than ten nanocuries of transuranic contaminants per gram of material. They are generated by a wide variety of government, commercial, and medical sources. Federal generators of low-level include defense and research facilities.

The preponderence of commercial low-level waste is contaminated paper, plastics, rubble, filters, construction material, tools, and protective clothing from nuclear power plants. The growing use of radioactive materials in such products as luminous watch dials, measurement devices and smoke alarms has added to the volume of industrial waste. Finally, during the past two decades the medical profession and the academic community have increased their use of radioactive materials in research and diagnosis. Nearly 100 million diagnostic applications of radioactive isotopes are performed annually.

Excluding federal government sources, between 75,000 and 100,000 cubic meters of commercial low-level waste are generated each year. Nearly half comes from power plants, with almost a quarter from industry and the final quarter from medical and research institutions. A failure to expand low-level nuclear waste capacity can have serious adverse effects on our national energy program and our national health care system.

Low-level radioactive waste management may rapidly become crisis management if states continue to delay development of new disposal sites and techniques. National inaction regarding the creation of additional disposal capacity and techniques threatens to halt or seriously curtail medical research and diagnostic activities critical to the public health and welfare. Every community in this nation will be affected if it becomes more difficult to reap the benefits of nuclear medicine. The timetable associated with providing additional sites is a critical factor.

Until recently, Barnwell accepted low-level waste without restriction, annually receiving in excess of 75% of the nation's commercial wastes. However, since mid-1978, South Carolina has limited waste receipts at the Barnwell site to 2.4 million cubic feet per year. On October 31, 1979, Governor Riley announced a phased schedule to further reduce that limit to 1.2 million cubic feet within two years. Because it is geologically unacceptable, South Carolina also prohibits the burial of organic chemical wastes which comprise a large fraction of the wastes generated by hospitals, medical schools and universities. South Carolina has also refused to accept any waste from certain generators with poor packaging or shipping records.

Based on projected increases in the volume of low-level waste produced in this country and the restrictions on acceptance by current repository states, DOE estimates that a total of at least six low-level waste disposal sites could be required by the year 1990 in accordance with the following schedule:

1980	Barnwell, Beatty and Hanford can handle the nation's low-level waste
1982*	Hanford could be closed as a national disposal site and a new site in addition to Barnwell and Beatty is required
1984	Beatty is filled to capacity and a second new site is required
1986	Only Barnwell remains open, three new sites are required
1988	Barnwell is still open, but the national generation rate requires four additional sites
1990**	Barnwell *and five additional sites are required*

There are several other compelling facts:

—Projections from past trends indicate that the nation will generate 321,000 cubic meters of low-level waste by

*Policy issues, not physical limitations, are the more immediate factors controlling the future of the Hanford site. Governor Ray has threatened a 1982 closure of the Hanford site as a national repository (except for medical wastes) unless some meaningful progress occurs toward region formation. The mood of the state on this issue is further evidenced by a recent unsuccessful effort by the Washington State Legislature to codify Governor Ray's position, and a subsequent state initiative drive to accomplish the same. However, the actual physical capacity of the present Hanford site is not projected to be exhausted until approximately 1990, with the potential for future site expansion.

**In the absence of *any* restrictions or other complicating factors relating to these three sites, it is possible, but not probable, that all three sites could remain open until 1990. However, it is already questionable as to whether the Beatty site can expand on surrounding federal lands, and Barnwell has already adopted a phased volume-reduction schedule.

1990 as compared to approximately 99,000 cubic meters in 1980.

—DOE estimates that, with a total of six low-level waste disposal sites which may be required by the year 1990, by dividing the nation into five regions, no region would require more than 1-1/3 sites comparable to Barnwell's capacity.

—The U.S. Department of Energy estimates that without additional sites we could experience severe disposal problems by mid-1983.

—The Nuclear Regulatory Commission estimates that, even beginning immediately, complete development of a new site would take from two to four years.

In summary, the severity of the problem requires that additional waste disposal capacity be developed as soon as possible. To accomplish that, the Task Force urges the National Governors' Association to adopt the recommendations outlined below.

RECOMMENDATIONS

Regionalization

The most fundamental fact is that we do not need 50 separate state sites. Instead, there is a need for up to six to eight well-regulated and economically viable regional sites. The difficult problem is how to rapidly develop a *process* to first define the most appropriate multi-state regions.

Unlike high level waste, which is primarily a federal responsibility, the disposition of low-level waste should be largely a state responsibility. In that respect, a regional solu-

tion, where disposal sites would be determined by groups of states negotiating cooperatively, is the Task Force's preferred approach. Regionalization, as prescribed by states, is mandated by such considerations as costs, risk in transport, regional balance and geologic or hydrologic circumstances which may render some states unsuitable for such sites.

Recommendation 1:

EACH STATE SHOULD ACCEPT PRIMARY RESPONSIBILITY FOR THE SAFE DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE GENERATED WITHIN ITS BORDERS, EXCEPT FOR WASTE GENERATED AT FEDERAL GOVERNMENT FACILITIES. WHILE EACH STATE IS FREE TO ESTABLISH ITS OWN SITE, THE STATES SHOULD PURSUE A REGIONAL APPROACH TO THE LOW-LEVEL WASTE DISPOSAL PROBLEM.

Since low-level waste is generated in every state, it is unfair to expect three states to shoulder the sole responsibility for the safe disposal of the entire nation's waste. Unlike high level waste, the problem is not so technologically complex that it requires the leadership of the federal government to manage it effectively. Because the states are primarily charged with protecting their citizens' health, safety, and environment, it is appropriate that they assume this responsibility. In addition, the public is more likely to accept siting and other waste management decisions made by state government than by a more remote, less accessible federal agency.

A regional approach is preferred because, with the exception of a few of the biggest waste-generating states, the volume of waste generated in a single state is too small to make a disposal site economical, i.e., to produce revenues sufficient

for its operation and maintenance. In addition, effective waste management requires coordination of regulation throughout the waste cycle—from generation through transportation and processing to ultimate disposal. Despite the best efforts of the disposal site state, improper handling of the waste at any point along the way can defeat the goal of safe disposal.

Regionalization is required by the diminishing capacity of current disposal sites. But even if the existing sites could continue to handle the entire national output of low-level waste, increasing transportation costs would favor establishing disposal facilities nearer to the waste generators and transportation risks are greater the longer the waste must travel.

Recommendation 2:

IN ORDER TO FACILITATE THE ESTABLISHMENT OF NEW DISPOSAL SITES, CONGRESS SHOULD AUTHORIZE THE STATES TO ENTER INTO INTERSTATE COMPACTS TO ESTABLISH REGIONAL DISPOSAL SITES. SUCH AUTHORIZATION SHOULD INCLUDE THE POWER TO EXCLUDE WASTE GENERATED OUTSIDE THE REGION FROM THE REGIONAL DISPOSAL SITE.

While the states should take primary responsibility for resolving low-level waste issues, they need the help of Congress to remove two obstacles in their path. First, the states should be given advance generic consent to form interstate compacts or other agreements in this subject area. Interstate compacts may be preferable to less formal modes of agreements between states because, as a binding contractual agreement, they provide the continuity of a stable framework which can endure from siting and licensing through decommissioning of a disposal site.

The Compact Clause of the U.S. Constitution requires either advance Congressional consent or subsequent ratification of a compact before it can take effect. By granting advance generic consent, Congress would facilitate the formation of regional low-level waste compacts by the states. Advance consent will also avoid the delay which would result if each individual compact had to be submitted to Congress for ratification following negotiation among the states.

Congress should also empower the states to exclude waste generated outside the region from their regional site. Recent court decisions indicate that, absent Congressional authorization, such a ban may be illegal. Without the authority to ban out-of-region waste many states may find it politically difficult to join a new regional waste compact.

Not only would this exclusivity power make it more attractive to form regional waste compacts in the first place, but as regions adopt such provisions the pressure will increase on those states which have not yet acted. (See Appendix I.)

In addition to compact authorization and exclusivity, the federal government should, at the same time, specify a strict policy for interim storage of low-level waste. Federal legislation should be considered to allow use of DOE sites only for temporary storage of low-level waste, and the storage fee should be commensurate with the disposal fee required by the operating sites. This would avoid the prospect of DOE sites becoming a permanent disposal alternative for those states failing to participate in a regional compact or develop their own site.

Two alternative approaches to Recommendation 2 were addressed by the Task Force with the following results:

Alternative 2A	Congress should require states to form regional compacts for low-level waste without mention of specific sanctions.
Alternative 2B	Congress should require states to form regional compacts and impose sanctions (similar to pending Congressional legislation) for states which fail to form compacts or establish their own sites.

Many of the compact-authorization bills drafted so far have coupled Congressional consent with sanctions for failure by the states to act. For example, the Udall bill (H.R. 6390) and the Lujan bill (H.R. 6212) would cancel NRC licenses in states which have failed to act. A draft bill was submitted by DOE for consideration by the State Planning Council. It would ban interstate low-level waste shipments unless made pursuant to a regional compact. The Task Force feels that such coercive measures are unnecessary at this time.

If the strategy for region-formation suggested below is followed, most of the states can be grouped into waste disposal regions in the near future. If the new regions opt to exclude out-of-region wastes, then pressure will naturally build on the remaining states to devise their own regional or in-state disposal solutions. In this manner, pressure will come from the states themselves rather than from federal coercion. This process is viewed as being more consistent with the principle of state responsibility in this subject area than federal coercion would be.

Therefore, the Task Force would recommend that Congress defer consideration of sanctions to compel the establishment of new disposal sites until at least two years after the enactment of compact consent legislation. States are already confronting the diminishing capacity of present sites and an

unequivocal political warning from those states' Governors. If at the end of the two-year period states have not responded effectively, or if problems still exist, stronger federal action may be necessary. But until that time, Congress should confine its role to removing obstacles and allow the states a reasonable chance to solve the problem themselves.

Region Formation—A Strategy

The first challenge the states face in devising a regional solution is determining the regional boundaries. The location of the three existing disposal sites suggests a good starting point. Waste generation rates and transportation considerations should be taken into account in the formation of regions for new disposal sites. But in the final analysis region-formation is a political question which will be influenced by considerations such as historic and geographic ties among the states and the track record they have established for cooperation in other areas of mutual concern.

In devising a rational and orderly strategy for region formation, the Task Force was guided by the following premises:

1. Region-formation should be accomplished by the states, rather than imposed on them by the federal government.

2. Initiatives by groups of states which are already exploring the potential for regional cooperation should be encouraged. (Such initiatives have developed in the Midwest and the Northeast.)

3. The strategy should minimize the risk that individual states would end up isolated from a surrounding region.

In addition, the Task Force makes the following assumptions:

1. The three disposal sites currently operating will likely become regional sites.

2. The Midwest and the Northeast are the most logical areas for the establishment of the first new regional disposal sites both because they are more remote from the current sites, and they include some of the highest volume-generating states.

The Task Force has noted a general reluctance by some states to devise a regional program which actually specifies what states are within what regions.

The Task Force has attempted to tackle this tough issue with a proposal for an initial course of action along the following recommended guidelines:

Recommendation 3:

A TOTAL OF SIX REGIONAL CONFERENCES SHOULD BE ORGANIZED AS SOON AS POSSIBLE TO DISCUSS THE NEED FOR ADDITIONAL DISPOSAL SITES AND THE OPTIONS FOR REGIONAL FACILITIES. THE GOVERNORS OF STATES WITH OPERATING SITES SHOULD CONVENE A CONFERENCE ON REGION-FORMATION FOR THE STATES IN THEIR GENERAL AREA. ALSO, THE NATIONAL GOVERNORS' ASSOCIATION, IN COOPERATION WITH THE NATIONAL CONFERENCE OF STATE LEGISLATURES AND THE STATE PLANNING COUNCIL, SHOULD CONVENE CONFERENCES ON REGION-FORMATION IN THE REGIONS WHICH DO NOT CONTAIN

OPERATING DISPOSAL SITES. ALTHOUGH PARTICIPATION IN EACH CONFERENCE SHOULD BE OPEN TO ANY STATE, THE FOLLOWING IS A *SUGGESTED* FORMAT:

Southeast Regional Conference
- *South Carolina
- North Carolina
- Georgia
- Florida
- Alabama
- Tennessee

Southwest Regional Conference
- *Nevada
- California
- Arizona
- New Mexico
- Colorado
- Utah

South Central Regional Conference
- Texas
- Louisiana
- Mississippi
- Arkansas
- Missouri

Midwest Regional Conference
- Illinois
- Indiana
- Ohio
- Michigan
- Wisconsin
- Minnesota
- Iowa

Northwest Regional Conference
- *Washington
- Alaska
- Idaho
- Montana
- Oregon
- Wyoming

Northeast Regional Conference
- Maine
- New Hampshire
- Vermont
- Massachusetts
- Rhode Island
- Connecticut
- New York
- New Jersey
- Pennsylvania

*The present repository states.

It should be noted that this format merely represents an initial attempt to suggest some natural groupings of states, based on their geographic proximity or previous cooperative efforts and agreements. For instance, states suggested in the Southwest and Northwest Regional Conferences have some historic ties as members of the Western Interstate Energy Board. Similarly, the states grouped in the South Central and Southeast Regional Conferences are among the states which

comprise the Southern States Energy Board. States listed below, not included in any of the above groups, should participate in their choice of one or more of the six conferences:

- Hawaii
- North Dakota
- Nebraska
- Kansas
- Oklahoma
- District of Columbia
- Kentucky
- Virginia
- West Virginia
- Maryland
- Delaware
- South Dakota

Other Alternatives

The Task Force considered the following alternatives to the above strategy:

Alternative 3A — Allow the states to continue to negotiate regional compacts on an ad hoc basis.

Alternative 3B — Request the federal government (Congress or DOE) to devise regions.

Alternative 3C — Have the states (through the NGA or other state association) convene a national conference on region-formation.

Alternative 3A was rejected because many states have not yet become involved in any discussions leading toward a regional solution to the low-level waste problem. The Task Force placed a high priority on the early involvement of *all* states in this process. In addition, forming regions on an ad hoc basis poses a real danger of leaving some individual states isolated from surrounding closed regions.

Alternative 3B was rejected because it violates the first premise on which the Task Force proceeded. While federal

imposition may become necessary if the states fail to take timely action, it should be the last resort.

Alternative 3C was rejected because it was felt it would be extremely difficult, if not impossible, to achieve consensus among all fifty states on a particular regional scheme.

Other Regionalization Recommendations

Recommendation 4:

> A COMPACT FORMED BY ANY REGIONAL GROUP OF STATES SHOULD CONTAIN A PROVISION FOR SUBSEQUENT ADMISSION OF NEW MEMBER STATES AND A MECHANISM TO ENABLE TEMPORARY OR EMERGENCY CONTRACTUAL ARRANGEMENTS WITH NON-REGION STATES OR INDIVIDUAL GENERATORS.

This would prevent a region's ability to exclude other states from becoming oppressive. Temporary arrangements would give time to states outside of compacts to develop their own compact or in-state site.

Recommendation 5:

> THE U.S. DEPARTMENT OF ENERGY AND ALL OTHER APPROPRIATE FEDERAL AGENCIES SHOULD PROVIDE TECHNICAL ASSISTANCE TO EACH OF THE REGIONAL CONFERENCES. THIS SHOULD INCLUDE INFORMATION ON WASTE GENERATION, SITE CHARACTERISTICS AND TRANSPORTATION CONSIDERATIONS, AND OTHER RELEVANT

> INFORMATION, IN ORDER THAT THE CONFERENCE CAN MAKE A PRACTICAL DETERMINATION ON REGION-FORMATION.

THE SITING PROCESS

Once the states have begun to form regions, the next major decision concerns the process which must be followed in order to develop an appropriate site within the region. Similar to the determination of regions, the siting process will be largely a political one. It will inevitably entail a mixture of state legislative and executive actions.

Consequently, it would be difficult and unwise to presuppose a uniform siting process. The details of the siting process and the individual state's commitments to the binding nature of the selection procedures should be negotiated as a provision of the compact.

A crucial issue here is public acceptance and the means by which the host state can maximize public acceptance. To help assure that support, the siting process must be scrupulously equitable for each state, and the public must know that its state will make the final decision. The whole issue of incentives discussed later, should also help to enhance public acceptance.

Accordingly, the Task Force suggests the following recommendations, alternatives, and other compact considerations with respect to the siting process.

Recommendation 6:

> NGA RECOGNIZES THE POLITICAL, TECHNICAL AND ECONOMIC VARIABLES INVOLVED IN EACH REGIONAL PROCESS. THEREFORE, IT URGES THAT THE SPECIFICS OF EACH

REGION'S SITING PROCESS BE DETERMINED AS PART OF COMPACT OR AGREEMENT NEGOTIATIONS BY THAT REGIONAL GROUP OF STATES. HOWEVER, TO INSURE THAT THE SITING PROCESS INCLUDES A MAXIMUM AMOUNT OF LOCAL INPUT, EACH STATE WITHIN A REGION SHOULD CREATE ITS OWN STATE REVIEW COMMITTEE TO ACT IN AN ADVISORY ROLE TO ITS OWN EXECUTIVE AND LEGISLATIVE BRANCHES AND TO THE REGIONAL NEGOTIATORS. SUCH COMMITTEES SHOULD INCLUDE STATE, LOCAL AND TRIBAL OFFICIALS AND TECHNICAL EXPERTS APPOINTED BY THE GOVERNOR.

Such State Review Committees should play a central role in conjunction with technical assistance provided by the federal government in developing the blueprint for the siting criteria. These committees will help to offset existing credibility gaps between states and the assisting federal agencies. State Review Committees can provide ongoing cooperation and independent analysis of siting recommendations. State Committees will also begin to involve local, state and tribal officials early in the dicision making stages of the siting process—a critical feature to later obtaining public acceptance in the site state. The specifics of this process are outlined below.

Steps toward compact formation

Typical compact provisions include: statement of purpose or policy, composition of a governing board, voting rights and financing provisions (see Appendix III). The basic steps toward compact formation include:

1. *Region-formation*

The region-formation strategy should yield at least nucleus of states within each of the six general regions. Those states which have reached tentative agreement to explore the possibility of forming a region can then proceed to more detailed negotiations. As they do so, they should try to keep the process open to additional states which may wish to join the region.

2. *Negotiations*

One consideration at this stage is who will negotiate for the state. The governor will in all likelihood appoint the negotiator(s). Since the final product will require legislative approval, a serious effort should be made to involve legislative leaders in the process from the beginning.

3. *Execution*

Once the party states have agreed on all the terms, a written agreement will be executed. Initial agreement could be expressed in one of two ways. The governors of each state could exchange reciprocal executive orders embodying the agreement. Or, if all of the party states belong to either the Western Interstate Energy Board or the Southern State Energy Board, the agreement could be executed as a "Supplemental Agreement" under the terms of the W.I.E.B. or S.S.E.B. compacts. However, either supplemental agreements or executive orders should be viewed as *interim* arrangements only (see Appendix I for more detailed discussion). Ultimately the agreement should be submitted to the legislature of each party state for enactment as a formal interstate compact. Though less formal agreements may serve as a basis for interstate cooperation, pending legislative enactment and the passage of Congressional consent legislation, it is only through legislative enactment by each state that the compact becomes a contrac-

tual obligation, legally binding on all the parties. Also, legislative enactment probably would tend to promote greater public acceptance of the proposal.

Site Selection Mechanics

While the various regions will want to adopt site selection procedures which are tailored to their own needs, the Task Force recommends the approach outlined below as one practical solution, with several alternative approaches also suggested. It is important to note that the policy and political decision-making process recommended below is in no way meant to be in lieu of environmental impact statements or any other environmental requirements.

1. Each state in the region should be encouraged to form a State Review Committee, composed of state, local and tribal officials, and technical experts. The State Review Committee would make an initial characterization of potential sites within the state with federal technical assistance as requested. As mentioned, this process would involve local, state and tribal officials early in the decision-making stages of the siting process—a critical feature to later obtaining public acceptance in a site state. Each State Review Committee would be encouraged to forward two or more site candidates to the Regional Review Committee.

2. The Regional Review Committee would be comprised of the Chairpersons of each State Review Committee in the region. The Regional Review Committee would narrow the number of candidate sites and make a more detailed characterization of each.

3. Final site selection would be made by the governing board of the compact. The Board would select a site from the

list of candidate sites submitted by the Regional Review Committee.

In addition, consideration should be given to formation of a national review board, comprised of members from each region. That board could negotiate from a national perspective—other potential tradeoffs among states or regions. The board could among other things, facilitate agreements whereby regions exchange different forms of low-level waste.

The Task Force considered, but ultimately rejected, the following as possible alternative approaches to the site selection mechanics:

Alternative 6A Allow DOE and USGS to recommend three suitable sites within each region or devise site selection criteria.

Alternative 6B Request NGS (or other state association) to devise a site selection process.

Host State Rights

The Task Force recommends the following approach to the controversial issue of veto action by a state selected as a regional site:

Recommendation 7:

A STATE WHICH IS ULTIMATELY SELECTED AS A REGIONAL SITE CAN EXERCISE A VETO, BUT AS A PENALTY THAT STATE COULD BE REQUIRED TO DROP OUT OF THAT COMPACT

An inevitable question is whether a state chosen to host a regional site should ultimately have veto power. Realistically, states would have a difficult time relinquishing all veto power.

In accordance with the site selection mechanics, a potential site state would have an opportunity to make its case for or against a proposed site to the Regional Review Committee and to the Board. If, despite all the evidence and argument presented by the site state, the Board ultimately selects that site over the site state's objection, the question of veto rights arises. Even if a site state veto is expressly disallowed by the terms of the compact, a *de facto* veto would likely result if the site state simply refuses to cooperate.

Therefore, the Task Force recommends that the site state be given the right to veto the Board's final decision, but the Board should have the authority to impose sanctions, including expulsion from the compact, if a veto is exercised. By expressly allowing a veto, some states' reluctance to enter a regional compact may be minimized. But significant sanctions should discourage unreasonable vetoes. If the vetoing state is denied access to the regional site it will have to either find another region which will accept its waste, or make its own arrangements in-state. The former would be very difficult, and the latter would likely be economically unattractive. In addition, the vetoing state will probably confront the same political problems in developing an in-state site which it encountered in the regional siting process.

In summary, site-selection procedures should be spelled out in all regional compacts. Even if the region contains an operating disposal site (or if one of the states in the region has offered to host a new regional site) the region may need additional disposal sites in the future. Also, the compact may become involved in siting other low-level waste management facilities, such as a waste processing plant. Or the compact

may become involved in siting hazardous waste facilities in one state as an incentive to the acceptance of a low-level waste facility in another state.

INCENTIVES AND BENEFITS

Expeditious development of regional low-level nuclear waste facilities will likely depend on the quality and quantity of incentives and benefits available to state and local units of government. The concept of *incentives* recognizes the need to encourage and motivate the states and local communities to accept location of a low-level nuclear waste disposal facility. For example, the availability of funds to be used at the discretion of site states and site communities, would act as a positive inducement toward locating a site. On the other hand, the concept of *benefits* acknowledges the need to provide some type of rightful compensation or commitment for specific needs of or effects on a state and community as a result of their acceptance of such a regional facility. For instance, such benefits could include financial commitments to the site state and community and substantial Perpetual Care and Decommissioning Funds to be provided by waste generators agreed to as a condition of their licensing.

Successful efforts to encourage public acceptance of a site must provide incentives and benefits to those affected by the presence of a regional site. Accordingly, two distinct parties need to be benefited: (1) the local community hosting the waste facility; and (2) the site state. These two parties should receive some kind of incentive and benefit to be provided by the federal government and the generating states within the region. Various state and federal legislative action should be encouraged to achieve that purpose.

To date, federal legislation has taken a negative approach in attempting to force state action on the disposal issue. The Task

Force prefers the carrot to the stick and believes that sanctions should be a last resort, only instituted if constructive programs fail to accomplish state action.

The degree to which incentives and benefits are utilized to facilitate local acceptance of a site will depend in part on the success of public education programs. Such programs can minimize the overall need for such incentives or benefits by increasing public awareness regarding the actual low risk associated with such sites. This is especially true given the general public's lack of understanding about the nature of low-level radioactivity.

Consequently, the most effective methods of achieving public acceptance in locating such a facility are to provide for public participation, public education and some form of financial incentive or benefit to the regional site state and community. State, federal and private interests must jointly share the responsibility for accomplishing these educational and economic purposes. Here the concept of "cooperative federalism," so deeply imbedded in our country's history, will face one of its more rigorous tests.

The Task Force offers the following recommendations on the question of incentives and benefits and encourages reference to Appendix II for a more complete discussion of these issues:

Recommendation 8:

> CONGRESS SHOULD CREATE A SPECIAL DISCRETIONARY FUND WHICH WOULD CONFER COMPENSATORY AND FINANCIAL BENEFITS TO SITE STATES AND SITE COMMUNITIES TO ACCOMPLISH AT LEAST THREE MAJOR PURPOSES: (1) TO COMPENSATE FOR SIGNIFICANT

> EFFECTS TO THE INFRASTRUCTURE OF THE COMMUNITY HOSTING A LOW-LEVEL NUCLEAR WASTE FACILITY, (2) TO PROVIDE EFFECTIVE INDUCEMENTS TO DEVELOP REGIONAL LOW-LEVEL NUCLEAR FACILITIES, AND (3) TO PROMOTE PUBLIC ACCEPTANCE OF LOW-LEVEL NUCLEAR WASTE DISPOSAL SITES.
>
> ADDITIONAL INCENTIVES COULD INCLUDE CERTAIN REGULATORY AND ENFORCEMENT AGREEMENTS AMONG THE GENERATING STATES AND A SYSTEM OF "BONUS" REVENUES TO THE SITE COMMUNITY, PART OF WHICH COULD INCLUDE STATE TAXES ASSESSED AGAINST GENERATORS OR SOME FORM OF COMPENSATION AGREED UPON AMONG THE GENERATING STATES.

The following is a suggested approach to Recommendation 8:

1. *The Federal Role:* Federal incentives must include funds to states for preliminary technical assistance and site characterization *and* a special fund consisting of discretionary grants awarded to states hosting a new regional site. The use of such grant monies would be left to the site states and site communities to decide, although eligibility for such funds could be tied to a regional agreement to establish a waste tracking system or agreement to establish a regional volume reduction policy. The discretionary grant appropriation would revert to the U.S. Treasury at a date certain as a further incentive to promote a quick state-regional response.

2. *The State Role:* Incentives to the site state and site community should include two basic approaches:

—Generating states in the region should provide some combination of economic, regulatory and enforcement commitments to the site state, and

—The site state should require economic incentives be available to any local community or county where the regional site is located.

Generating states should form strict agreements, as part of the terms of a compact, that they will at least:

—Take enforcement action against waste generators in their state on notice of violations.

—Provide inspections of packaging operations prior to shipment to avoid the unsafe transport of low-level wastes.

—Develop policies on transportation routing and notification of shipment.

As a condition of licensing, the site state could require payment of a "bonus" amount from all generators in the region. That revenue would accrue to the site community for its own selected use. A fair compensation sum would be determined by the local government, industry and the states.

3. *Industry's Role:* It is reasonable to assume that the private sector will assume the capitalization costs for regional sites provided there is enough anticipated waste volume to guarantee a profitable operation. Accordingly, industry must be involved in the early stages of development of regional sites to help determine if the volume generated within the proposed region is sufficient to guarantee future profits and thus induce their front-end investment. Operators of the Barnwell site have estimated capitalization costs for a site to be between $6 and $10 million, from initial licensing to completed construction.

The overall pricing system must insure profitability, but at the same time generators must help to provide part of the additional funding for incentives and benefits to the state and local community hosting the site. Generators of the waste should be obligated to pay the previously mentioned "bonus" dollars to local communities, and they should also be required to contribute to the site state's Perpetual Care and Decommissioning Funds.

Recommendations 9:

FEDERAL FUNDS MUST BE MADE AVAILABLE FOR SITE CHARACTERIZATION STUDIES, PLANNING GRANTS, AND OTHER TECHNICAL ASSISTANCE FOR STATES TO DEVELOP REGIONAL SITES. SUCH FUNDING SHOULD BE MADE AVAILABLE IN A MANNER TO ENCOURAGE DEVELOPMENT OF REGIONAL SITES.

Part of the federal role must be to offer available resources only to states engaged in preliminary activities required to develop regional sites. At a minimum, the Nuclear Regulatory Commission, the U.S. Environmental Protection Agency, the U.S. Geological Survey, the U.S. Department of Energy and the Department of Transportation must be available for all reasonable technical assistance requested by such states. Critical to establishing productive state-federal relationships throughout the process will be the state's ability to acquire independent capability to assess their waste disposal problems.

Recommendation 10:

AS A TERM OF THE COMPACT, THE GENERATING STATES SHOULD PROVIDE THE SITE STATE ADEQUATE INCENTIVES. THESE

INCENTIVES, TO BE NEGOTIATED BY THE PARTICIPATING STATES, COULD INCLUDE BINDING COMMITMENTS FOR IMPROVED REGULATORY ENFORCEMENT AND AGREEMENTS AMONG STATES TO EXCHANGE DIFFERENT WASTES OR TO NEGOTIATE SPECIFIC EXCHANGES BASED ON ECONOMIC OR OTHER NEEDS OF STATES WITHIN A REGION.

Specific commitments to site states from generating states could include (see Appendix II for more detailed discussion):

—Negotiating tradeoffs among states, such as one or more states agreeing to develop hazardous waste sites or a low-level waste processing facility in exchange for use of a low-level disposal site in another state. For example, the State Commerce Departments in Oregon and Washington negotiated such an exchange agreement in the mid-1960's. Oregon accepts toxic chemical waste from the State of Washington and sends its low-level waste to the Hanford disposal site.

—Requiring strict enforcement or immediate action against the waste generators upon notification by the site state of violations committed by the shipper of a generating state.

—Providing for vigorous enforcement of strict packaging and transportation regulations.

It should be noted that federal rule making is currently underway to improve transportation safety and licensing procedures regarding low-level waste. The U.S. Department of Transportation has proposed "Radioactive Materials Highway Routing Regulations." The proposed new requirements would provide national uniformity in highway routing, a notification

system to states and a data bank for future emergency response planning. Similarly, the U.S. Nuclear Regulatory Commission has issued a preliminary draft of its regulations (10 C.F.R. Part 61) relating to licensing of low-level waste disposal sites. Although the proposed regulation will not be published for written comment in the *Federal Register* until early 1981, currently NRC is holding regional workshops to receive critiques on the draft.

RESEARCH

Ongoing, vigorous and comprehensive research programs are necessary in the management of low-level radioactive waste to assure that existing and future low-level waste disposal sites can meet all applicable criteria and standards to protect public health and safety using the best available technology. In addition, such programs can serve to enhance confidence in the methods used to manage these wastes.

Although the techniques used in the management of low-level waste have improved since 1962 when the first commercial low-level waste disposal site was licensed, the basic technology has seen little change. Recently, due primarily to the rapidly increasing costs for disposal, the incentives to develop new technologies have increased, especially in the area of waste treatment and volume reduction. This has prompted the commercial sector to increase its research and development efforts in these particular areas.

The Department of Energy is currently conducting research to improve the management of low-level waste. The Nuclear Regulatory Commission and the Environmental Protection Agency both have ongoing research and assessment programs in support of their development of standards for low-level waste management. These federal efforts include all aspects of radioactive waste management, from generation to final disposal.

While these ongoing efforts are acknowledged, it is felt that programs aimed at managing low-level wastes can be better enhanced if priority research attention is given to the areas recommended below.

Recommendation 11:

A SIMPLE CLASSIFICATION SYSTEM FOR LOW-LEVEL WASTE IS URGENTLY NEEDED. THE NUCLEAR REGULATORY COMMISSION MUST DEVELOP A SYSTEM BASED ON THE TOTAL HAZARD WHICH INCLUDES AN UPPER AND LOWER CONCENTRATION LIMIT.

Low-level waste is currently defined in the regulations as all radioactive waste which is not defined as high-level waste. This is a totally inadequate definition because certain low-level waste may be considered to be below a threshold concentration and therefore could be disposed of as ordinary trash with insignificant impact, while other low-level waste may be above a concentration that would make it unacceptable for shallow land burial.

Recommendation 12:

THE NRC MUST ESTABLISH IMPROVED GUIDELINES CONCERNING GENERATION AND TREATMENT METHODS FOR LOW-LEVEL WASTE. A VOLUME REDUCTION POLICY FOR ALL COMMERCIAL GENERATORS OF RADIOACTIVE WASTE MUST BE ESTABLISHED THAT ADDRESSES BOTH ADMINISTRATIVE AND TECHNOLOGICAL METHODS

THAT HAVE BEEN PROVEN AS VIABLE ALTERNATIVES. THIS POLICY SHOULD APPLY TO AGREEMENT STATES AS WELL.

Because of the lack of classification system for low-level waste and the somewhat inadequate regulations concerning generation and treatment, many forms of low-level waste are currently treated and disposed of by methods which are in many cases less than desirable. The NRC policies should include:

1. Continuing research into ways to reduce at the source the total volume of radioactive waste generated through such techniques as substituting non-radioactive substances for radioactive ones and substituting short-lived nuclides for longer-lived ones.

2. Improved methods of segregating and identifying waste at the source, thus eliminating that segment of trash that is currently deemed radioactive by association.

3. Improved methods of volume reduction for certain types of waste such as: (a) controlled incineration for combustible trash and scintillation fluids; or (b) advanced methods of treatment such as calcination for other types of low-level nuclear waste streams.

4. Improving the characteristic of the final low-level waste product by developing better solidification media, improved containers or a combination of both.

Recommendation 13:

A COMPREHENSIVE ENVIRONMENTAL MONITORING PROGRAM IS ESSENTIAL TO DETERMINE HOW EFFECTIVE THE TREATMENT AND DISPOSAL CONSIDERATIONS HAVE BEEN.

Continuing research is necessary to insure that equipment and techniques for environmental monitoring are optimized to detect and isolate possible migration of radioactive material for a low-level waste site both during the operational period and after decommissioning.

OTHER RECOMMENDATIONS

Recommendation 14:

AS A TOP PRIORITY, THE NUCLEAR REGULATORY COMMISSION AND THE DEPARTMENT OF TRANSPORTATION SHOULD DEVELOP A COMPREHENSIVE AND COORDINATE INSPECTION AND ENFORCEMENT PROGRAM TO INSURE STRICT COMPLIANCE WITH PACKAGING AND TRANSPORTATION REGULATIONS.

Since the closure of the two western sites, due mainly to sloppy waste shipments, NRC and DOT have made a more serious effort to improve their policies in these areas. Prior to that, according to a recent report issued by the U.S. General Accounting Office, the agencies gave a low priority to enforcement, relying mainly on the integrity of shippers and carriers to comply with the regulations governing the safety of radioactive materials' transportation. The GAO report concludes that much of their work remains fragmented and in need of improvement. For instance, neither NRC nor the Department has done an independent assessment of the scope of the packaging and transportation problems.

DOT is currently involved in rulemaking on Highway Routing of Radioactive Materials (Docket HM-164) which includes the movement of spent fuel and other forms of radioactive material and waste. In that respect, it should be noted that the issue of "prenotification" is of particular concern to states. NGA should consider encouraging DOT to cooperate

with state, local and tribal governments to design and test a system of prenotification on the highway movement of radioactive materials and wastes, to include the point that existing prenotification systems in states not be preempted.

Recommendation 15:

THE AGREEMENT STATES SHOULD BE ENCOURAGED TO ADOPT CIVIL PENALTY AUTHORITY TO ASSIST IN ENFORCEMENT OF NUCLEAR WASTE REGULATIONS.

The same GAO report concluded that the enforcement program of Agreement States was not comparable to that of NRC's because only two of the 26 states have adopted civil penalty authority. Such authority could serve as an intermediate enforcement tool between a written notice of noncompliance and injunction authority—the two actions now available. This authority might encourage more effective and immediate compliance as opposed to just a written notice to a licensee.

Recommendation 16:

THE NRC SHOULD ESTABLISH NATIONAL STANDARDS FOR A "CRADLE TO GRAVE" MANIFEST SYSTEM—IN A COORDINATED AND MORE STREAMLINED VERSION OF THE HAZARDOUS WASTE PROGRAM UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT—TO TRACK LOW-LEVEL WASTE FROM THE POINT OF GENERATION TO THE POINT OF DISPOSAL. AGREEMENT STATES SHOULD BE ENCOURAGED TO ADOPT A COMPARABLE METHOD TO INCREASE REGULATORY OVERSIGHT ON A NATIONAL BASIS.

It is estimated that anywhere from 15% to 40% of low-level waste is not accounted for.

Recommendation 17:

THE NATIONAL GOVERNORS' ASSOCIATION SHOULD PLAY AN ACTIVE ROLE IN IMPLEMENTING THESE RECOMMENDATIONS AND IN WORKING WITH OTHER ORGANIZATIONS TO ACCOMPLISH THE GOALS AND OBJECTIVES SET FORTH IN THIS REPORT. TOWARD THAT END, THE TASK FORCE ENCOURAGES THE NGA TO ALLOCATE SPECIFIC FUNDING AND STAFF RESOURCES FOR IMPLEMENTATION OF THE RECOMMENDATIONS OF THIS REPORT.

CONCLUSION

Developing additional sites and disposal and source reduction techniques for low-level nuclear waste disposal is a critical national priority which requires the expeditious and cooperative action of all states. Clearly, every community in this nation benefits from the nuclear medicine and industrial uses which generate a large portion of this waste. Consequently, it is unfair to expect only three states to solely share the waste disposal burdens for the entire nation's benefits.

In addition to the question of the equity in sharing that burden, there is general consensus that in the next two decades, if the projected increases in national waste generation are accurate, between six and eight new disposal sites may be required. Failure to meet those needs could stifle the national health care delivery system and have serious effects on a major source of our electricity.

In this report, the Task Force has attempted to first define the pivotal issues related to the national waste disposal problem and then recommend pragmatic and innovative solutions.

The Task Force has concluded that the remaining issues are not technical, but matters of public policy and political decision-making. The consequences of inaction in developing additional sites were dramatically revealed last year with the temporary closure of two of the three national disposal facilities.

Therefore, the Task Force strongly emphasizes the need for prompt action by states to begin that important cooperative effort. The national challenge to safely and economically resolve the problems of low-level waste disposal can be met through the swift and responsible action of every state.

Affidavit of Booth Gardner in Support of Motion to Dismiss Complaint (dated 10/26/90).

STATE OF WASHINGTON)
) ss.
County of Thurston)

Booth Gardner, being duly sworn upon oath, deposes and says:

1. I am the Governor of the State of Washington.

2. The State of Washington has been a sovereign state of the United States since 1889. This affidavit is submitted in support of the annexed motion of the states of Washington, Nevada, and South Carolina for Summary Judgment and Dismissal of the above-captioned lawsuit.

3. In 1979, the state of Washington together with the states of Nevada and South Carolina concluded that the three states in which the commercial low-level radioactive waste disposal facilities operated had born the burden of providing disposal capacity for the entire nation long enough. The national problem of disposal of low-level radioactive waste required a national solution supported by all the states. Accordingly Governor Dixie Lee Ray, my predecessor as Governor of Washington, Governor Richard W. Riley of the state of South Carolina, and Governor Robert List of Nevada announced their determination to eventually close the three disposal facilities then in operation and urged Congress to pass legislation which ultimately became the Low-Level Radioactive Waste Policy Act of 1980, Public Law 96-573 (1980 Act).

4. The principal goal of that legislation was to provide for an equitable sharing of the burden of low-level radioactive waste disposal throughout the nation, thereby relieving Washington, South Carolina, and Nevada of this entire burden. Under the 1980 Act, Congress gave the responsibility for management of the disposal of low-level radioactive waste to each state within whose borders such waste is generated. The concept of state responsibility for the proper disposition of low-level radioactive waste was not an independent creation by Congress, but was cooperatively recommended and developed by the states through the National Governors Association which represents the governors of all fifty states. Under the 1980 Act, Congress encouraged the states to form regional compacts to develop regional low-level waste disposal facilities. Under the 1980 act, after January 1, 1986 the regional compacts were given the authority to restrict out-of-region waste from being disposed at the regional disposal site.

5. Prior to the 1980 act, the citizens of the state of Washington expressed their concerns over accepting other states low-level radioactive waste by passing overwhelmingly a ballot initiative preventing such waste acceptance. Although this measure was overturned in court, Washington citizens continue to express concerns over the known, potential, and perceived risks associated with nuclear waste disposal.

6. After the 1980 Act, significant progress was achieved in developing regional disposal compacts. As of 1985 over thirty states including Washington, Nevada, and South Carolina entered into seven regional compacts and at least two other states had decided to develop their own interstate disposal facilities. However, progress on achieving Congressional ratification of compacts was slowed by the fact that only the Northwest, Southeast, and Rocky Mountain Compact states would have had disposal capacity available as of January 1, 1986 and the other states would not have had any place to send their waste for disposal.

7. From 1980 to 1985, while new compacts had been formed, new disposal facility siting, design, construction, licensing, and operation were years off. With the January 1, 1986 deadline approaching, a potential disposal crisis existed. Again, the states took the lead in resolving the crisis. In July and August of 1984, Governor Riley of South Carolina and the Washington State Legislature substantially improved the prospects for ratification of compacts by announcing that they would consider accepting low-level waste from outside their compact regions for some period after January 1, 1986, if Congress would ratify their compacts. The states, again under the auspices of the National Governors Association, developed a compromise under which the states of Washington, South Carolina, and Nevada agreed to continue to accept all of the nation's waste for an additional seven years in exchange for incentives and penalties that would better guarantee that new sites would be developed. The state- generated and approved National Governors Association's proposal served as the foundation for Congressional action. In 1985 Congress took the state- developed compromise, unanimously passed the 1985 Amendments Act, and averted the potential low-level radioactive waste disposal crisis.

8. The state of Washington, as does New York, chooses to allow and license the construction and operation of various facilities which produce low-level radioactive waste as an agreement state under the Atomic Energy Act. Washington recognizes that the benefits of these operations accrue to all its citizens despite the burden of providing for waste disposal. Generators of low-level waste, licensed by and located in the state of New York for beneficial purposes, have continued to ship radioactive waste out of New York to one of the open disposal sites in Washington, South Carolina, or Nevada in reliance on the provisions of the Amendments Act.

9. Under the 1985 Amendments Act, significant progress has been made by several states and compacts in developing new low-level radioactive waste disposal capacity. The states of California, Arizona, North Dakota, and South Dakota consolidated from what would have been two Compacts into the Southwest Compact; California is the host-state of this Compact. Illinois is the host-state of the Central Midwest Compact made up of Illinois and Kentucky. Nebraska is the host-state of the Central Compact made up of Nebraska, Kansas, Oklahoma, Arkansas, and Louisiana. Texas is a go-it-alone state proposing to develop its own site without a regional compact. Each of these compacts and states have made progress toward development of operational low-level radioactive waste disposal facilities in compliance with the Amendments Act. California and Nebraska have submitted license applications for disposal facilities. California expects its facility to be operating before the end of 1991. Additionally, pursuant to the process set in motion by the Amendments Act, the Northwest Compact and the Rocky Mountain Compact have recently negotiated a proposed agreement whereby the states of Nevada, Wyoming, New Mexico, and Colorado will have access to the disposal site in Washington after 1992. This agreement furthers the Amendments Act policy to regionalize disposal capacity. The probability that the 1985 Amendments Act process will result in the orderly development of new disposal capacity throughout the nation has been central to my decision to provide continued access to the site located in Washington for the disposal of low-level radioactive waste pursuant to the Amendments Act.

10. If the act is determined to be unconstitutional or otherwise invalid, it is my intention to reevaluate the policy position Washington should take for continued operation of its disposal facility absent an agreement among the states for a national policy for comprehensive low-level radioactive waste management. In my opinion, the question whether states should take

title to waste after the deadline established by the Amendments Act is secondary to the question of whether states will face up to their collective responsibility as sovereigns and states of the union to solve this national crisis based on the compromise developed by the states and unanimously approved by Congress.

(Sworn to by Booth Gardner, October 26, 1990.)

Affidavit of Carroll A. Campbell, Jr. (dated 10/24/90).

STATE OF SOUTH CAROLINA)
)
COLUMBIA, SOUTH CAROLINA)

Carroll A. Campbell, Jr., being duly sworn, says:

1) I am Governor of the State of South Carolina.

2) The State of South Carolina has been a sovereign state since March 26, 1776, and became the eighth state of the United States when it ratified the Federal Constitution in 1788. This affidavit is submitted in support of the annexed motion of the states of Washington, Nevada, and South Carolina for Summary Judgment and Dismissal of the above-captioned lawsuit.

3) In 1979, the State of South Carolina together with the States of Nevada and Washington, concluded that the three states in which commercial low-level radioactive waste disposal facilities operated had borne the burden of providing disposal capacity for the entire nation long enough. The national problem of disposal of low-level radioactive waste required a national solution supported by all the states. Accordingly, Governor Richard W. Riley, my predecessor as Governor of South Carolina, and Governor Robert List of Nevada and Governor Dixie Lee Ray of Washington announced their determination to eventually close the three disposal facilities then in operation and urged Congress to pass legislation which ultimately became the Low-Level Radioactive Waste Policy Act of 1980, Public Law 96-573 (1980 Act).

4) The principal goal of that legislation was to provide for an equitable sharing of the burden of low-level radioactive waste disposal throughout the nation, thereby relieving South

Carolina, Washington, and Nevada of this entire burden. Under the 1980 Act, Congress gave the responsibility for management of the disposal of low-level radioactive waste to each state within whose borders such waste is generated. The concept of state responsibility for the proper disposition of low-level radioactive waste was not an independent creation by Congress, but was cooperatively recommended and developed by the states through the National Governors Association which represents the governors of all fifty states. Under the 1980 Act, Congress encouraged the states to form regional compacts to develop regional low-level waste disposal facilities. Under the 1980 Act, after January 1, 1986 the regional compacts were given the authority to restrict out-of-region waste from being disposed at the regional disposal site.

5) After the 1980 Act, significant progress was achieved in developing regional disposal compacts. As of 1985, over thirty states including South Carolina, Washington, and Nevada entered into seven regional compacts and at least two other states had decided to develop their own interstate disposal facilities. However, progress on achieving Congressional ratification of compacts was slowed by the fact that only the Northwest, Southeast, and Rocky Mountain Compact states would have had disposal capacity available as of January 1, 1986.

6) From 1980 to 1985, while new compacts had been formed, new disposal facility siting, design, construction, licensing, and operation were years off. With the January 1, 1986 deadline approaching, a potential disposal crisis existed. Again, the states took the lead in resolving the crisis. In July and August of 1984, Governor Riley of South Carolina and the Washington State Legislature substantially improved the prospects for ratification of compacts by announcing that they would consider accepting low-level waste from outside their compact regions for some period after January 1, 1986, if

Congress would ratify their compacts. The states, again under the auspices of the National Governors Association, developed a compromise under which the states of South Carolina, Washington, and Nevada agreed to continue to accept all of the nation's waste for an additional seven years in exchange for incentives and penalties that would better guarantee that new sites would be developed. The state-generated and approved National Governors Association's proposal served as the foundation for Congressional action. In 1985, Congress took the state-developed compromise, unanimously passed the 1985 Amendments Act, and averted the potential low-level radioactive waste disposal crisis.

7) The State of South Carolina, as does New York, chooses to allow and license the construction and operation of various facilities which produce low-level radioactive waste as an agreement state under the Atomic Energy Act. South Carolina recognizes that the benefits of these operations accrue to all its citizens despite the burden of providing for waste disposal. Generators of low-level waste, licensed by and located in the state of New York for beneficial purposes, have continued to ship the radioactive waste out of New York to one of the open disposal sites in South Carolina, Washington, or Nevada in reliance on the provisions of the Amendments Act.

8) Under the 1986 Amendments Act, significant progress has been made by several states and compacts in developing new low-level radioactive waste of disposal capacity. The states of California, Arizona, North Dakota, and South Dakota consolidated from what would have been two Compacts into the Southwest Compact; California is the host-state of this Compact. Illinois is the host-state of the Central Midwest Compact made up of Illinois, and Kentucky. Nebraska is the host-state of the Central Compact made up of Nebraska, Kansas, Oklahoma, Arkansas, and Louisiana. Texas is a go-it-alone state proposing to develop its own site without a regional

compact. Each of these compacts and states have made progress toward development of operational low-level radioactive waste disposal facilities in compliance with the Amendments Act. California and Nebraska have submitted license applications for disposal facilities. California expects its facility to be operating before the end of 1991. Additionally, pursuant to the process set in motion by the Amendments Act, the Northwest Compact and the Rocky Mountain Compact have recently negotiated an agreement whereby the states of Nevada, Wyoming, New Mexico, and Colorado will have access to the disposal site in Washington after 1992. This agreement furthers the Amendments Act Policy to regionalize disposal capacity. The probability that the 1985 Amendments Act process will result in the orderly development of new disposal capacity throughout the nation has been central to my decision to provide continued access to the site located in South Carolina for the disposal of low-level radioactive waste pursuant to the Amendments Act.

9) If the Act is determined to be unconstitutional or otherwise invalid, it is my intention to re-evaluate the policy position South Carolina should take toward continued operation of the disposal facility absent an agreement among the states for a national policy for comprehensive low-level radioactive waste management. In my opinion, the question whether states should take title to waste after the deadline established by the Amendments Act is secondary to the question of whether states will face up to their collective responsibility as sovereigns and states of the Union to solve the national crisis based on the compromise developed by the states and unanimously approved by Congress.

(Sworn to be Carroll A. Campbell, Jr., October 24, 1990.)

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Affidavit of Robert J. Miller in Support of Motion to Dismiss Complaint (dated 11/1/90).

STATE OF NEVADA)
) ss:
CARSON CITY)

Robert J. Miller, being first duly sworn, deposes and says:

1. I am Governor of the State of Nevada.

2. The State of Nevada has been a sovereign state of the United States since October 31, 1864. This Affidavit is submitted in support of the annexed Motion of the States of Washington, Nevada and South Carolina for Summary Judgment and Dismissal of the above-captioned lawsuit.

3. In 1979, the State of Nevada, together with the States of South Carolina and Washington, concluded that the three states in which commercial low-level radioactive waste disposal facilities operated had borne the burden of providing disposal capacity for the entire nation long enough. The national problem of disposal of low-level radioactive waste required a national solution supported by all the states. Accordingly, Governor Robert List, my predecessor as Governor of Nevada, Governor Richard Riley of the State of South Carolina, and Governor Dixie Lee Ray of Washington announced their determination to eventually close the three disposal facilities then in operation and urged Congress to pass legislation which ultimately became the Low-Level Radioactive Waste Policy Act of 1980, Public Law 96-573 (1980 Act).

4. The principal goal of that legislation was to provide for an equitable sharing of the burden of low-level radioactive waste disposal throughout the nation, thereby relieving Washington, South Carolina, and Nevada of this entire burden.

Under the 1980 Act, Congress gave the responsibility for management of the disposal of low-level radioactive waste to each state within whose borders such waste is generated. The concept of state responsibility for the proper disposition of low-level radioactive waste was not an independent creation by Congress, but was cooperatively recommended and developed by the states through the National Governors Association which represents the governors of all fifty states. Under the 1980 Act, Congress encouraged the states to form regional compacts to develop regional low-level waste disposal facilities. Under the 1980 Act, after January 1, 1986 the regional compacts were given the authority to restrict out-of-region waste from being disposed at the regional disposal site.

5. After the 1980 Act, significant progress was achieved in developing regional disposal compacts. As of 1985, over thirty states including Washington, Nevada, and South Carolina entered into seven regional compacts and at least two other states had decided to develop their own intrastate disposal facilities. However, progress on achieving Congressional ratification of compacts was slowed by the fact that only the Northwest, Southeast, and Rocky Mountain Compact states would have had disposal capacity available as of January 1, 1986 and the other states would not have had any place to send their waste for disposal.

6. From 1980 to 1985, while new compacts had been formed, new disposal facility siting, design, construction, licensing, and operation were years off. With the January 1, 1986 deadline approaching, a potential disposal crisis existed. Again, the states took the lead in resolving the crisis. In July and August of 1984, Governor Riley of South Carolina and the Washington State Legislature substantially improved the prospects for ratification of compacts by announcing that they would consider accepting low-level waste from outside their compact regions for some period after January 1, 1986, if

Congress would ratify their compacts. The states, again under the auspices of the National Governors Association, developed a compromise under which the States of Washington, South Carolina, and Nevada agreed to continue to accept all of the nation's waste for an additional seven years in exchange for incentives and penalties that would better guarantee that new sites would be developed. The state-generated and approved National Governors Association proposal served as the foundation for Congressional action. In 1985, Congress took the state-developed compromise, unanimously passed the 1985 Amendments Act, and averted the potential low-level radioactive waste disposal crisis.

7. The State of Nevada, as do other states, chooses to allow the construction and operation of various facilities which produce radioactive waste, recognizing that benefits of these operations accrue to the citizens despite the burden of providing for waste disposal. Generators of low-level waste licensed by and located in the State of New York for beneficial purposes have continued to ship radioactive waste out of New York to one of the open disposal sites in Washington, South Carolina, or Nevada in reliance on the provisions of the Amendments Act.

8. Under the 1985 Amendments Act, significant progress has been made by several states and compacts in developing new low-level radioactive waste disposal capacity. The states of California, Arizona, North Dakota, and South Dakota consolidated form what would have been two Compacts into the Southwest Compact; California is the host-state of this Compact. Illinois is the host-state of the Central Midwest Compact made up of Illinois, and Kentucky. Nebraska is the host-state of the Central Compact made up of Nebraska, Kansas, Oklahoma, Arkansas, and Louisiana. Texas is a go-it-alone state proposing to develop its own site without a regional compact. Each of these compacts and states have made progress toward

development of operational low-level radioactive waste disposal facilities in compliance with the Amendments Act. California and Nebraska have submitted license applications for disposal facilities. California expects its facility to be operating before the end of 1991. Additionally, pursuant to the process set in motion by the Amendments Act, the Northwest Compact and the Rocky Mountain Compact have recently negotiated an agreement whereby the States of Nevada, Wyoming, New Mexico, and Colorado will have access to the disposal site in Washington after 1992. This agreement furthers the Amendments Act Policy to regionalize disposal capacity. The probability that the 1985 Amendments Act process will result in the orderly development of new disposal capacity throughout the nation has been central to my decision to provide continued access to the site located in Nevada for the disposal of low-level radioactive waste pursuant to the Amendments Act.

9. If the Act is determined to be unconstitutional or otherwise invalid, it is my intention to re-evaluate the policy position Nevada should take toward continued operation of the disposal facility absent an agreement among the states for a national policy for comprehensive low-level radioactive waste management. In my opinion, the question whether states should take title to waste after the deadline established by the Amendments Act is secondary to the question of whether states will face up to their collective responsibility as sovereigns and states of the Union to solve this national crisis based on the compromise developed by the states and unanimously approved by Congress.

10. Further affiant sayeth not.

(Sworn to by ROBERT J. MILLER.)